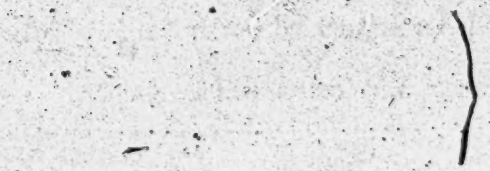
TABLE OF CONTENTS

	PAGE
Decision and Order of National Labor Relations Board	1
Opinion of Boyd Leedom	34
Opinion of Philip Ray Rodgers	35
Intermediate Report and Recommended Order (1957)	44
Intermediate Report and Recommended Order (1959)	86
Supplemental Report and Recommended Order (1959)	101
Second Supplemental Report and Recommended Order (1962)	234



UNITED STATES OF AMERICA

BEFORE THE

National Labor Relations Board

DARLINGTON MANUFACTURING COMPANY, ROGER MILLIKEN, DEERING, MILLIKEN & CO., INC. and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO	Case No. 11-CA-1071

DECISION AND ORDER

On April 30, 1957, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent Darlington Manufacturing Company, herein referred to as "Darlington," had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the General Counsel, Darlington and the Charging Union filed exceptions to the Intermediate Report and supporting briefs. Darlington and the Charging Union also filed reply briefs, and Darlington requested oral argument. On September 16, 1957, the Board heard oral argument in which the General Counsel, Darlington and the Charging Union participated.

On December 16, 1957, the Board issued an order remanding the case to the Trial Examiner for the purpose of taking "evidence with respect to the single employer status of Respondent and related corporations." Pursuant

to this order and after issuance of a complaint against the affiliated corporations, and Roger Milliken as an individual, a further hearing was held before Trial Examiner Buchanan. On December 31, 1959 the Trial Examiner issued his Supplemental Intermediate Report, a copy of which is attached hereto, finding that Darlington and the related corporations, herein referred to as "Deering-Milliken" did not occupy the status of a single employer. Thereafter the General Counsel and the Charging Union filed exceptions to the Supplemental Intermediate Report and supporting briefs. Darlington and Deering-Milliken filed a brief in support of the Supplemental Intermediate Report.[1]

During the hearing on remand the Trial Examiner had dismissed the complaint as to Roger Milliken. On October 22, 1958, the Board affirmed the dismissal "upon the sole ground that the amendment of the complaint to the extent that it included Roger Milliken as an individual Respondent went beyond the permissible scope of the Board's Remand Order of December 16, 1957." On December 31, 1958, the Regional Director issued a complaint against Roger Milliken alleging that Roger Milliken personally, and by and with Respondent Darlington and Respondent Deering-Milliken, committed unfair labor practices. On the same day the General Counsel moved to consolidate the complaint against Respondent Roger Milliken with the prior complaint against Respondent Darlington. On March 11, 1959, the Board denied the motion to consolidate the complaints. On April 9, 1959, a hearing was held before Trial Examiner Buchanan upon the complaint as to Roger Milliken and on April 30, 1959, the Trial Examiner issued an Intermediate Report, a copy of which is attached hereto, recommending dismissal of that complaint. Excep-

[1]The Charging Union also requested oral argument as to this portion of the case. This request is hereby denied as the record, including the briefs, adequately presents the issues and positions of the parties.

tions and briefs were filed by the General Counsel, the Charging Union, and the Respondent, Roger Milliken.

On January 11, 1961, the Charging Union filed a motion requesting that the Board remand the case to the Trial Examiner for the purpose of taking newly discovered evidence. On February 15, 1961, the Board granted the motion. On April 3, 1961, Deering-Milliken filed a complaint in the District Court for the Middle District of North Carolina requesting that the remand be enjoined and the case returned to the Board. On April 28, 1961, the District Court granted the requested relief.[2] On October 13, 1961, the Court of Appeals for the Fourth Circuit modified the order of the District Court to permit a limited remand of the case to the Trial Examiner.[3] On February 5, 1962, a hearing was held pursuant to the remand permitted by the Court and on March 23, 1962, the Trial Examiner issued his Second Supplemental Intermediate Report, a copy of which is attached hereto. Exceptions and briefs were filed by the General Counsel and the Charging Union and the Respondent Deering-Milliken filed a brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearings and finds that no prejudicial error was committed.[4] The rulings are hereby affirmed. The Board has considered the Intermediate Reports, the Supplemental Intermediate Reports, the exceptions and

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[2] 193 F. Supp. 741.

[3] 295 F. 2d 856.

[4] For the purpose of the first hearing, involving the liability of Darlington Manufacturing Company, the Union obtained subpoenas directed to various parties not respondents in this case. Upon petitions duly filed the Trial Examiner revoked the Union's subpoenas. The Union has excepted to the Trial Examiner's revocations of the subpoenas, but, in its brief, the Union conditioned the exception upon a Board finding that the Respondent's closing of its plant was not caused by the employees' selection of the Union as their bargaining representative. In view of the findings hereinafter made, the Union's exception to the Trial Examiner's revocations of the subpoenas is deemed to be withdrawn.

briefs, the oral argument, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner insofar as they are consistent with this Decision and Order.[5]

In March 1956 the Charging Union initiated an organizational campaign among Darlington's employees that culminated in a Board conducted election on September 6, 1956, which was won by the Union. Throughout the campaign Darlington's supervisors interrogated employees as to their union activities[6] and made threatening statements to the employees because of those activities.[7] At the same time Darlington was also engaged in an extensive plant improvement program.[8] The day after the Union won the election Roger Milliken, Darlington's president, decided that he would recommend to Darlington's directors and stockholders that they close the plant. He testified:

> I felt that as a result of the campaign that had been conducted and the promises and statements made in these letters that had been distributed [by the Union], that if we had had some possible hope of achieving competitive . . . [costs] . . . by taking advantage of new machinery that was being put in, that this hope had diminished as a result of the election because a majority of the employees had voted in favor of the union.

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[5]The General Counsel and the Union have excepted to the Trial Examiner's handling of various documents submitted as evidence at the first hearing. In some instances the Trial Examiner admitted the documents as evidence, in others he excluded them. In view of the findings hereinafter reached, the Trial Examiner's rulings on the admissibility of the disputed documents were not prejudicial.

[6]The record contains evidence of about 20 such instances of interrogation.

[7]There is evidence of about 30 threats made to employees during the period of the organizational campaign.

[8]From 1952 through 1956 the Respondent authorized about $723,000 for capital expenditures; of that sum approximately $400,000 was actually spent between January 1956 and September 1956.

Milliken thereupon called a special meeting of Darlington's board of directors to be held on September 12, although ordinarily ten days to two weeks written notice was given for directors' meetings. The directors subsequently met in a session that lasted only about 75 minutes; they resolved to liquidate Darlington and to call a special meeting of stockholders to approve the proposal. Also on September 12 the Union asked Darlington for a bargaining conference but was told to wait until after it was certified by the Board.[9]

The stockholders met on October 17 to consider a resolution which recited that the directors were recommending dissolution of the corporation because of "certain developments" that related to Darlington's operations. General Manager Oeland testified that Milliken identified the "certain developments" as " . . . the recent election where the majority of the people in the plant . . . [were] . . . for the Union . . ."[10] South Carolina State Senator Mozingo, who was present at the stockholders' meeting, gave uncontradicted testimony that Milliken opened the meeting with the statement "that on September 6, when [the employees] voted for a union that he decided to close the mill." The stockholders approved the resolution to liquidate. Senator Mozingo testified, also without contradiction, that he had the following conversation with Milliken after the meeting:

> ". . . he said, 'Well, you will probably get another industry herein Darlington,' and I said, 'How do you

[9]On the same day Darlington filed objections to the conduct of the election. The Regional Director, on October 8, issued a report on objections recommending that they be overruled and the Union be certified. Darlington did not file exceptions and the Board issued a certification to the Union on October 24, 1956.

[10]For the period following the directors' meeting, the record contains evidence of about 25 statements by supervisors to employees to the general effect that the Union's election victory was responsible for the closing of the plant and would result in the blacklisting of the employees in their search for new jobs. There is also evidence that on 8 occasions supervisors tried to convince employees to support a petition that was circulating among them to disavow the Union.

> expect us to get another industry when you are leaving a s[t]igma on us here that can't be erased . . . Not only that, it is unfair because eighty-three percent of these people I am told have signed a petition to go back to work . . .' he said, 'As long as there are seventeen percent of the hard core crowd[11] here, I refuse to run the mill."

Darlington had accepted no new orders from customers after the directors' meeting on September 12 but continued to operate the plant to fill the orders at hand. The Charging Union's representatives did meet with Darlington's officials on November 7 and requested certain wage information, which Darlington never supplied. Darlington discontinued productive operations on November 24 and sold the plant machinery and equipment at auction on December 12 and 13, 1956.

The 8(a)(1) violations

The Trial Examiner found that Darlington violated Section 8(a)(1) of the Act by (a) interrogation of employees with respect to their activities in behalf of the Union, (b) statements (made before the representation election) that Darlington would close the plant if the employees selected the Union as their bargaining agent, (c) statements (made after the directors' special meeting) that connected the decision to close the plant with the employees' activities in behalf of the Union, and (d) encouragement of employees to sign the petition disavowing the Union that circulated after the election. The Trial Examiner did not set forth all the evidence supporting these findings. It is sufficient to state, however, that the evidence is overwhelming and, to a large

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[11]The witness subsequently elaborated on the "hard core crowd" and reported Milliken's expression as "hard core labor people."

extent, uncontradicted.[12] Accordingly, we adopt the foregoing findings made by the Trial Examiner.[13]

The 8(a)(3) violation

One of the major issues in this case was raised by Darlington's contention that, as an employer, it had an absolute right "to go out of business for whatever reason it may choose, and regardless of whether union animosity may have contributed to the decision." However, Darlington has not relied exclusively upon this contention as a defense to the charge that it violated Section 8(a)(3).

Darlington also advanced a more conventional defense to the Section 8(a)(3) charge; it claimed that the shutdown of its mill was due to economic and financial factors. In its brief (at pages 15 through 24) Darlington has listed 8 so-called "economic" factors that assertedly caused it to shut

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[12]Darlington has not seriously challenged the Trial Examiner's Section 8(a)(1) findings. At page 48 of its brief in support of exceptions, the Respondent has stated: "With respondent's corporate existence at an end, it seems particularly unrewarding to debate whether these circumstances constituted a violation of the Act. Reference is made to these [8(a)(1)] findings here only because of the manifest unfairness of assessing the company with liability for such acts and words of supervisors in the turbulent days following the announcement that the mill would close. To direct that respondent publish a notice that it will desist from further 'interfering' of this kind is both futile and absurd."

[13]We do not pass upon any of the 8(a)(1) violations alleged besides those that the Trial Examiner found were supported by the record, because in the particular circumstances of this case any additional findings of 8(a)(1) violations would be merely cumulative. Moreover, we do not adopt, or pass upon, the Trial Examiner's findings that: (1) unlawful statements made by Darlington's supervisors did not reflect declarations by Roger Milliken; (2) a supervisor's request that an employee keep him informed of employees' union activities and the surveillance of such activities by the supervisor are not unlawful; (3) the supervisors' unlawful threats were not proof of such threats by Roger Milliken; (4) certain posters posted by Darlington did not constitute unlawful interference or threats; and (5) Darlington did not instigate circulation of the petition disavowing the Union.

the plant. Six of them fit the traditional concept of "economic" factors. The remaining 2 asserted "economic" factors pertaining to the employees' union activities; one of them was termed "The TWUA Election." When an employer discharges its employees for selecting a union to represent them, the motivation is not "economic" in the sense contemplated by the Act—notwithstanding the employer's belief that it could not afford to pay increased wages that the union representative might demand.[14] The overall effect of Darlington's listing of the 8 so-called "economic" factors is an admission that the employees' union activities were, in part, the cause of its decision to close the mill.[15]

The Trial Examiner rejected Darlington's claim that all 8 factors contributed to Darlington's decision to close the mill; he found that Darlington's decision to shut the plant "would not have been made but for the protected organizational activities" of the employees. We agree. If Darlington's general behavior during the months that preceded the election did not reflect actual confidence in its business future, it established, at the very least, the intention to continue as an operating concern. The 6 truly economic factors were problems that had faced Darlington over an extended period, and Darlington's plant improvement program was specifically designed to overcome such problems. That program involved an expenditure of $400,000 in the 9-month period preceding the election. Just one month before the directors' special dissolution meeting, general manager Oeland reported a projected $40,000 loss to President Milliken, yet, despite such a serious and unpromising economic forecast, Milliken took no action to slow up the modernization program in any way. It was not until the employees

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[14] *Industrial Fabricating, Inc., et al,* 119 NLRB 162.

[15] Darlington has stated, at page 23 of its brief, that ". . . the election was responsible for the decision to call the meeting at which it was decided to recommend liquidation to the stockholders. . . ."

selected the Union as their bargaining representative that Darlington's attitude towards its operations changed. With the election, the renovation program was discontinued; the directors met as soon after the election as was possible for them; the directors' special meeting lasted just over an hour —barely time for the directors to itemize, much less to discuss, the 6 asserted economic factors that caused the plant closing. After the directors' meeting Darlington's supervisors told the employees that the election was the cause of the mill shutdown; and, at the stockholders' dissolution meeting, Milliken specifically stated that he decided to close the mill when the employees selected the Union as their bargaining agent.

Moreover, even assuming, as the Respondent contends, that the 6 genuine economic factors as well as the employees' union activities were responsible for the closing of the mill, Darlington's action was no less unlawful.[16] A plant shutdown resulting in the discharge of employees that is partly due to employees' union activities constitutes an unfair labor practice.[17]

At this point we reach the fundamental issue noted above—whether an employer has the absolute right to go

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[16]Contrary to Darlington, *Mount Hope Finishing Company* v. *N. L. R. B.*, 211 F. 2d 365 (C. A. 4) is irrelevant here. The Court specifically found therein that the employer's removal of a plant did not violate the Act because the employees' union activities merely accentuated the employer's pre-existing lawful reasons for moving its plant and that the employer's move of its plant was motivated by factors apart from its employees' union activity. Darlington has, itself, distinguished this case from *Mount Hope* by conceding that the closing of its plant was partly attributable tot he employees' selection of the Union.

[17]*N. L. R. B.* v. *Jamestown Sterling Corp.*, 211 F. 2d 725, 726 (C. A. 2), wherein the Court stated, "If employees are discharged partly because of their participation in a campaign to establish a union and partly because of some neglect or delinquency, there is nonetheless a violation of the National Labor Relations Act. . . ." See also *N. L. R. B.* v. *Whitin Machine Works*, 204 F. 2d 803, 805 (C. A. 1).

out of business even if its reason for doing so is its employees' union activities. Section 8(a)(3) provides:

> It shall be an unfair labor practice for an employer —by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

Darlington discriminated in regard to its employees' tenure of employment by closing its plant—thereby discharging the employees—and, because the plant closing was the direct result of the employees' selection of the Charging Union as their collective bargaining representative, Darlington's retaliation against the employees for their activities in behalf of the Union discouraged the employees' continued membership in the Union.[18] Notwithstanding this uncomplicated, literal violation of Section 8(a)(3) established by its conduct, Darlington contends its action was not unlawful.

The Respondent has advanced several arguments to support its contention. The Respondent claims, first, that the South Carolina statutes under which it was incorporated gave it the "absolute right voluntarily to liquidate."[19] If the South Carolina Code did contain such a right, it could prevail only if not in conflict with the National Labor Relations Act.[20] But it is unnecessary to resolve whether

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[18] *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Associated Press* v. *N. L. R. B.*, 301 U. S. 103.

[19] Code of Laws of South Carolina, Section 12-641 (1952) provides that, "All corporations incorporated in this State . . . shall always have the right to go into liquidation and to wind up their affairs and dissolve by resolution of the stockholders representing a majority of capital stock . . ."

[20] *Garner, et al., t/a Central Storage and Transfer Company* v. *Teamsters, Chauffeurs and Helpers Local Union No. 776 (A. F. L.)*, 346 U. S. 485, 500-501. "We conclude that when federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure . . ." And see *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468.

there is a conflict between the South Carolina and the federal statutes; the South Carolina Code did not give Darlington the absolute, unlimited right to liquidate that it claimed. The Code, considered in its entirety, provides, contrary to Darlington, that, in the event of a corporate dissolution, the corporate entity survives for the very purpose of continuing the legal obligations that the corporation incurred before the dissolution or in the course of dissolution.[21]

Darlington's second argument is that the shutting of the mill "effectively and finally terminated" the existing employer-employee relationship, and that, thereafter, it was no longer an employer within the meaning of the Act.[22] The Act does not state the specific characteristics of an "employer." The Act does, however, state that "The term 'employee' shall include . . . any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice . . ." Darlington's discharged workers remained employees within the statutory definition, and their employment rela-

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[21]Code of Laws of South Carolina, Section 12-644 (1952) provides that any corporate dissolution under Section 12-641 (the provision relied upon by Darlington). ". . . shall not bar an action for two years thereafter against any corporation or any of its members . . ." And Section 12-601 provides that "All corporations [that are dissolved] shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them . . ."

[22]This argument cannot apply to the discharges that Darlington effected before its last day of production on November 24, 1956, because Darlington has otherwise conceded that an employer does "not escape liability for unfair labor practices committed while it was still in business." The Respondent discharged its employees over a 6 weeks period. Thus on October 13 it had about 510 employees, on October 20 about 460 employees, on October 27 about 345 employees, and so on until November 24 when the Respondent discharged the last of its employees. Inasmuch as the Respondent was an employer with a working staff of employees up until the date it fired the last group of employees, even under the Respondent's contention, the employees fired before November 24 were discriminatorily discharged.

tionship vis-a-vis their employer did not terminate.[23] Moreover, Darlington did not dissolve into nothingness at the time it discontinued production operations on November 24. It continued to exist as a corporate entity under the laws of South Carolina; it liquidated fixed assets at auction in December 1956; it has been distributing funds to its stockholders; and it has been vigorously defending this proceeding before the Board.

Darlington also argued that the Board and the Courts, in deciding National Labor Relations Act cases, have established an employer's absolute right to go out of business.[24] All but one of the cases the Respondent relies upon to support this proposition are irrelevant or actually contrary to Darlington. Darlington has cited *Seaboard Packing Company*, 107 NLRB 1295, but in that case the Board adopted an Intermediate Report that stated" . . . the evidence does not . . . establish that the Respondent closed down [its plant] and locked out its employees to avoid dealing with the Union." Darlington advanced these pronouncements to support its position.

> "The stockholders of Tupelo Garment Co., had the absolute right to dissolve their corporation and the Board was without authority to prevent this." *N. L. R. B.* v. *Tupelo Garment Company*, 122 F. 2d 603, 606 (C.A. 5).
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> ". . . a bona fide shutdown of a plant does not of itself constitute a violation of the Act . . ." *Atlas Underwear Company* v. *N. L. R. B.*, 116 F. 2d 1020 1023 (C. A. 6).

Examination of these two cases shows that the citations were taken out of context. *Tupelo*, a contempt case, in-

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[23] See *Phelps Dodge Corporation* v. *N. L. R. B.*, 313 U. S. 177, 190-191.

[24] Darlington has conceded that Board and Court decisions establish violations of Section 8(a)(3) by employers that move or temporarily close their plants because of anti-union considerations.

volved the issue whether newly organized corporations were successors to the respondent; there was no issue of the respondent's right to go out of business. The quotation from the *Atlas* case is taken from the context of the decision in *N.L.R.B.* v. *Asheville Hosiery Co.*, 108 F. 2d 288 (C. A. 4), in which the Fourth Circuit stated more fully at page 293:

> . . . while a bona fide shutdown of a plant does not constitute a violation of the Act, a shutdown not made in good faith, and intended to discourage unionization is illegal.

There is one decision that, at first glance, lends considerable support to Darlington's claim that it could shut its plant for discriminatory reasons. In view of its importance to Darlington's defense, we recite at this point the entire portion of that decision on which Darlington has relied. In *N. L. R. B.* v. *New Madrid Co., d/b/a Jones Mfg. Co.*, 215 F. 2d 908, 914 (C. A. 8), the Eighth Circuit said:

> But none of this can be taken to mean that an employer does not have the absolute right, at all times, to permanently close and go out of business, or to actually dispose of his business to another, for whatever reason he may choose, whether union animosity or anything else, and without his being thereby left subject to a remedial liability under the Labor Management Relations Act for such unfair labor practices as he may have committed in the enterprise, except up to the time that such actual and permanent closing or true and bona fide change in ownership has occurred. No one can be required to stay in private business, and no one can be prevented from permanently closing or abdicatingly selling such a business. And the Act affords no basis on which to order a person to reinstate employees in a business which he has, with plain finality, put out of existence, or which he has actually disposed of to another,

> and as to which he neither in law nor in fact possesses any power over the operations of his successor, either of management right in general or of labor-relations control in particular. Cf. *Southport Petroleum Co.* v. *N. L. R. B.*, 315 U. S. 100, 106. No more, in our opinion, can the Act be said to contain any basis to assess remedial back-pay against such a person, beyond the date of his permanent closing or abdicating sale of the enterprise.

Reference to the entire decision in the *New Madrid* case shows that the Court agreed with the Board's findings that New Madrid's shutdown of a plant violated Section 8(a) (1), (3) and (5) of the Act. The Court overruled, however, the Board's finding that New Madrid's subsequent sale of the plant failed to rescind New Madrid's actual control over it. The Eighth Circuit also rejected the Board's conclusion that New Madrid and its successor (Jones) were jointly liable for correction of the unfair labor practices that New Madrid, alone, had committed before the plant sale. In thus reversing the Board, the Court noted that New Madrid had decided not to reopen the plant after an audit showing that the plant had lost money. The Court commented that in some circumstances a successor to a business is liable for the unfair labor practices of his vendor and followed with the above-recited paragraph, which cut off New Madrid's responsibility for remedying the unfair labor practices at the point of the plant sale. The Court went on to hold successor Jones liable for the reinstatement of the employees that New Madrid had discriminatorily discharged.

Accordingly, the legal conclusions that the Court reached were contrary to the court's *obiter dictum* that an employer can permanently close a business "for whatever reason he may choose, whether union animosity or anything else." The Court found that New Madrid's mill shutdown with its concomitant discharge of employees violated Section 8(a)

(3) of the Act. Indeed, the Court issued an order requiring the reinstatement of the discharged employees; such reinstatement order could be made only in the case of unlawful discharge. Moreover, Darlington's interpretation of the Eighth Circuit's decision attributes to the Court the overruling of its own earlier decisions,[25] even though the statutory right of an employer to close a plant permanently was not in issue and was not briefed by any party. In the circumstances we are loath to accept the Respondent's interpretation of the Circuit Court's intendment in the *New Madrid* case. We view the above-quoted paragraph as part of the Court's concern with the remedy in a case wherein the Court otherwise found that New Madrid, in a bona fide transaction, sold its plant to Jones. In any event, if Darlington has correctly interpreted the Court's meaning, we respectfully disagree.

There is no decided case directly dispositive of Darlington's claim that it had an absolute right to close its mill, irrespective of motive. We are convinced, however, that relevant Board and Court decisions reject Darlington's view. It has been decided by the Supreme Court, for example, that an employer violated Section 8(3) of the Act by the wholesale discharge of all the employees on its boat because they were members of a particular union.[26] In a

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[25] See, for example, *N.L.R.B.* v. *National Garment Company, et al,* 166 F. 2d 233 (C. A. 8), wherein the Court, in rejecting the Respondent's argument that the discharge of all its employees was not discrimination, stated at page 238, "They discriminated against all employees by treating them differently than they would have treated them had some of them not joined the union within the plain intendment of Section 7 and 8(1)(3). . ."; *Williams Motor Company* v. *N. L. R. B.,* 128 F. 2d 960 (C. A. 8), wherein the Eighth Circuit found that an employer's permanent discontinuance of a department violated Section 8(3).

[26] *N. L. R. B.* v. *Waterman Steamship Corporation,* 309 U. S. 206. The Court stated at page 219, "And employees . . . have a right guaranteed by the Act that they will not be dismissed because of affiliation with a particular union."

case very similar on its facts to the instant case the Fourth Circuit found that an employer violated Section 8(a)(1) and (3) by shutting its mine after threatening to do so because of his employees' union activities.[27] In another instance the Third Circuit held that an employer which closed one of its plants because of opposition to its employees' union activities violated Section 8(a)(1), (3) and (5) of the Act.[28] And the Eighth Circuit upheld a finding that an employer which discontinued one of its departments in retaliation for its employees' activities in behalf of a union violated Section 8(3).[29]

In summary, Section 8(a)(3) literally proscribes Darlington's closing of its business in retaliation for the employees' selection of the Union as their bargaining representative; Darlington has failed to advance any substantial reason for excepting its conduct from the operation of Section 8(a)(3); and, in cases factually similar to this one, employers charged with violating Section 8(a)(3) have been found guilty thereof. In addition, Darlington's conduct was contrary to the fundamental spirit and purpose of the Statute. Darlington's threat to close its mill if the Union became the bargaining representative of its employees is a classical example of a violation of Section 8(a)(1).[30]

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[27] *N. L. R. B.* v. *Norma Mining Corporation, et al.*, 206 F. 2d 38 (C. A. 4); the finding related to respondent Ward. See also *N. L. R. B.* v. *Joseph Stremel d/b/a Crow Bar Coal Company*, 141 F. 2d 317, 318 (C. A. 10), in which the Court said, "A shut-down or lock-out of employees for the purpose of discouraging membership in a labor organization constitutes discrimination within Section 8(3) and (1) of the Act."

[28] *N. L. R. B.* v. *Wallick & Schwalm Company, et al.*, 198 F. 2d 477 (C. A. 3). See also *Town & Country Mfg. Co., Inc.*, 136 NLRB No. 111.

[29] *Williams Motor Company* v. *N. L. R. B.*, 128 F. 2d 960 (C. A. 8).

[30] See, among other cases, *Audubon Cabinet Company, Inc.*, 117 NLRB 861, 863; *J. H. Rutter-Rex Manufacturing Co., Inc.*, 115 NLRB 388, 389.

As noted above, a partial effectuation of Darlington's threat —such as a temporary closing of the mill, or a discharge of some but not all of the employees—would have violated Section 8(a)(3). Yet Darlington would have this Board find that total effectuation of the threat—the permanent closing of its mill with the concomitant discharge of all its personnel—did not violate the Act. In other words, under Darlington's contention an employer with a staff of 100 employees violates Section 8(a)(3) if he discriminatorily fires 50 or 75 or even 99 of his 100 workers, or if he temporarily lays off all of them, but, if he retaliates against them, for their union activities by permanently discharging all of them, the finality of his conduct would make it lawful. The argument is self-defeating.

The preamble of the amended Act provides, in part:

> It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organizations, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

The "policy of the United States" is to mitigate and eliminate obstacles to the free flow of commerce "by encouraging the practice and procedure of collective bargaining" and by protecting workers in the exercise of their right to organize and to select a bargaining representative. On the other hand, Darlington's policy, as evidenced by its conduct, is directly contrary to that prescribed by the Statute. Once the employees had exercised their statutory right of

selecting the Union by the process prescribed by the Statute—the Board election—Darlington destroyed the possibility of collective bargaining by shutting its plant. Darlington is mistaken in its claim that by going out of business and permanently reducing "the free flow of commerce" the Statute made lawful its discharge of employees for their engagement in organizing activities. Congress has taken from employers the right to discharge employees for engaging in protected activities. The withdrawal of this right is absolute and unequivocal.

We find, in conclusion, and for the foregoing reasons that Darlington's closing of the mill, with its concomitant discharge of employees violated Section 8(a)(3) and (1) of the Act.

There is, moreover, independent reason for rejecting the contention that Darlington had an absolute right to close down its mill and discharge its employees. As will appear below, Darlington was but one constituent part of a single entity, consisting of Deering, Milliken and Company and its affiliated corporations. Thus we have here the closing of a single plant of the several in the one entity because of union activity, conduct clearly proscribed by the Act.[21]

The 8(a)(5) violation

The Trial Examiner found that Darlington's violations of Section 8(a)(3) "were so complete as to discourage and ultimately thwart the Union from pursuing its right to bargain" and were a *fortiori* violative of Section 8(a)(5). In his opinion "as it is discriminatory against its employees, so does it constitute a refusal to bargain for an employer, on the basis of a union's campaign propa-

[21] *N. L. R. B.* v. *Norma Mining Corporation*, 206 F. 2d 38, 41-42 (C. A. 4).

ganda, oral and in writing, concerning improved working conditions and greater pay, to anticipate demands and compulsion to grant such demands, and therefore to terminate its operations and avoid bargaining." The Examiner also found that Darlington's refusal to furnish the Union with wage and related bargaining information independently violated Section 8(a)(5).[22] We adopt these findings of the Trial Examiner. We find further that Darlington's refusal to bargain collectively with respect to the employees' tenure of employment was in derogation of the Union's status as the majority representative of the employees.

The Remedy

The Trial Examiner recommended that Darlington cease and desist from committing further unfair labor practices and that Darlington publish notices to that effect in local newspapers. He also recommended, "dependent on resumption of operations," that Darlington bargain collectively with the Union and offer reinstatement to the discriminatorily discharged employees. Although the Trial Examiner found that "an injury cognizable by law has occurred" and that "there can be a decision to compensate" the discriminatees,[23] he did not recommend the payment of back pay to them.

We adopt the Trial Examiner's recommendations as to remedy to the extent that they require Darlington to cease

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[22]In the absence of specific exception we adopt the Trial Examiner's finding that Darlington's initial unlawful refusal to bargain with the Union occurred on September 12, 1956.

We do not adopt the Trial Examiner's finding, in effect, that Darlington's violations of Section 8(a)(1) were not relevant to Darlington's *bona fides* in refusing to bargain with the Union; nor do we adopt his finding that the Union's last request for bargaining information may have been "made with an eye to negotiating with prospective purchasers" of Darlington's plant.

[23]The Examiner otherwise stated, however, that the payment of back pay "would reflect a punitive aspect."

and desist from committing unfair labor practices, require Darlington to post notices in newspapers,[34] and direct Darlington to bargain collectively with the Union and to reinstate the discriminatees in the event Darlington, at some time, recommences operations.[35]

The Trial Examiner refused to require direct mailing of notices to employees, asserting that such a measure would be punitive. We do not agree. Direct mail may be the only way by which some of Darlington's former employees can learn of the Board's Decision and Order in this case, inasmuch as some of them may have left the geographical area covered by the newspapers that will carry the notice. Accordingly, we shall order Darlington to mail copies of the notice to the last known address of each discriminatee.[36]

The Trial Examiner refused to recommend back pay for the approximately 500 employees unlawfully discharged by Darlington because, in his opinion, there was no record proof that Darlington would have continued to operate the plant absent the employees' union activities and because he deemed controlling the Court opinion in the *Mount Hope* case.[37]

We do not agree with the Trial Examiner that it was necessary for the record affirmatively to show that the

[34] In the absence of a permanent plant location where notices can be posted, we find this method of posting proper. *Southland Mfg. Co.*, 94 NLRB 813, 817; *Russell Mfg. Co., Inc., et al.*, 82 NLRB 1081, 1088, enforced in this respect 187 F. 2d 296 (C. A. 5) and 191 F. 2d 358 (C. A. 5). Contrary to Darlington, this form of notice posting is consistent with *N. L. R. B.* v. *Reynolds Corporation*, 155 F. 2d 679 (C. A. 5), wherein the Court refused merely to require posting of notices at a non-operating plant site.

[35] We do not agree, however, with the Trial Examiner's statement that there was "no claim that the sale [of the Respondent's assets] was not to *bona fide* purchasers for value."

[36] *N. L. R. B.* v. *American Laundry Machinery Company*, 152 F. 2d 400, 401 (C. A. 2); *N. L. R. B.* v. *Sunbeam Electric Manufacturing Co.*, 133 F. 2d 856, 861 (C. A. 7).

[37] *Mount Hope Finishing Company* v. *N. L. R. B.*, 211 F. 2d 365 (C. A. 4). The record does not support the Trial Examiner's finding that the "General Counsel and the Union here appear to have accepted the Court's decision" in *Mount Hope*.

Respondent would have continued to operate its plant, absent unlawful motivation, in order to warrant a back pay award. Any uncertainty as to the continued operation of Darlington's plant—based on some reason other than its unlawful retaliation against the employees—is a matter to be determined at the compliance stage of the Board's process. The back pay remedy obtains where there is an unlawful discharge of employees. In the event a respondent liable for back pay has a superseding lawful reason for terminating its back pay liability that respondent has the privilege to establish that fact at the compliance stage of a proceeding. In like manner, the Respondent herein would have the opportunity, if necessary, to reduce its back pay liability by showing that, as of a particular date, it would have closed its plant or laid off some dischargees even if the employees had not voted for the Union.[38] We also find that the Trial Examiner improperly relied upon the Fourth Circuit opinion in *Mount Hope*. The Court reversed, on the merits, a Board finding that the respondent had violated Section 8(a)(3); accordingly, the Court had no remedy to pass upon in *Mount Hope*.

We are convinced that a back pay award is essential in this case to rectify Darlington's fundamental violation of Section 8(a)(3). The Board has wide discretion in directing a back pay award under Section 10(c) of the Act;[39] Darlington's discontinuance of its business does not terminate the Board's authority in this regard.[40] "The mere fact that an employer may cease to do business certainly does not end the public interest involved in seeing that a back-pay award under the Act is satisfied."[41]

[38] In any event the Trial Examiner's finding that the record establishes that Darlington's mill would not have closed but for the employees' union activities gives rise to the presumption that Darlington would have continued to operate the mill absent that union activity.

[39] *Virginia Electric Power Company* v. *N. L. R. B.*, 319 U. S. 533; *Phelps Dodge Corporation* v. *N. L. R. B.*, 313 U. S. 177.

The unusual circumstances of this case, however, have made it more than ordinarily difficult to decide on the period that the back-pay award should cover. The Darlington plant has been closed and there is no immediate prospect that it will be reopened. The Board's remedy of reinstatement with back pay to run until such time as reinstatement has occurred, which is the Board's customary remedy where an employer has discriminatorily discharged his employees, is thus wholly impractical where the closed plant only is taken into consideration. Yet the approximately 500 discharged employees, thrown into the ranks of the unemployed in a very small city,[42] would suffer severally from the closing of the plant. It is reasonable to assume that these employees would have continued in their employment indefinitely, particularly in view of the large sums spent and allocated for modernization of the mill. In order to restore "the situation, as nearly as possible, to that which would have obtained but for the illegal discrimination"[43] we shall therefore order the Respondent, Darlington, to provide back pay until the discharged employees are able to obtain substantially equivalent employment.[44]

[Loss of pay shall be based upon earnings which the employees normally would have earned from the date of the discrimination against them, to the date of their reinstate-

[40] *N. L. R. B.* v. *S. W. Dixon d/b/a U. S. Trailer Manufacturing Company*, 184 F. 2d 521 (C. A. 8), wherein the Court distinguished *N. L. R. B.* v. *Grace Company*, 184 F. 2d (C. A. 8), a case relied upon by Darlington, because, unlike the *Dixon* and instant cases, the *Grace* decision did not involve reimbursement for loss of wages. See also *N. L. R. B.* v. *Caroline Mills, Inc.*, 167 F. 2d 212 (C. A. 5).

[41] *N. L. R. B.* v. *Killoren, etc.*, 122 F. 2d 609 (C. A. 8); see also *Waterman Steamship Corporation* v. *N. L. R. B.*, 119 F. 2d 760, 763 (C. A. 5).

[42] The 1960 census shows that Darlington had a population of 6,710.

[43] *Phelps Dodge Corporation* v. *N. L. R. B.*, 313 U. S. 177, 194.

[44] If, however, the employees are placed on a preferential hiring list at other Deering-Milliken mills, which, as will appear below, occupy a single employer status with Darlington, we shall toll back pay as of the time they are placed on such list.

ment, less net earnings, computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289; *NLRB* v. *Seven-Up Company of Miami, Inc.*, 344 U. S. 344. It will also be recommended that Respondent preserve and, upon request, make available to the Board payroll and other records to facilitate the computation of the backpay due.] (Bracketed material added by Board's supplemental order of November 21, 1962.)

Were Darlington a single entity the remedy above would provide the only practicable solution although this limited redress for the unfair labor practices found is clearly inadequate. The extended supplemental hearings were held in order to determine whether or not Darlington occupied a single employer status with Deering-Milliken and its affiliated corporations. The Trial Examiner found that Darlington did not occupy such a status. We do not agree. It is now well established that for two or more legal entities to constitute a "single employer" for purposes of assessing liability for unfair labor practices it must be shown that there was a sufficient degree of common ownership and common control of labor relations and operations so that it may be said that they are engaged in a common enterprise.[45] In our opinion the evidence fully supports a finding that Darlington and Deering-Milliken and its affiliated corporations meet this test.

The "common ownership" necessary for such a finding is amply demonstrated by the stock ownership shown in the stipulation entered into among the parties. Thus the Milliken family owns, either through direct stock ownership or through ownership of corporations holding stock, at least 66% of the stock of Darlington. In similar fashion the Milliken family owns a majority of the stock of Deering-

[45] *Dearborn Oil and Gas Corporation*, 125 NLRB 645, 647; *Editorial "El Imparcial," Inc.*, 123 NLRB 1585, 1593, enforced 278 F. 2d 184 (C. A. 1); *Combined Century Theatres, Inc.*, 120 NLRB 1379, 1380-1381.

Milliken and Cotwool and from 88% to 55% of all of the affiliated corporations. Such stock ownership clearly satisfies the Board's requirements for a finding of "common ownership."[46]

That "common ownership" here constituted something more than the mere holding of the stock is shown by the identity of the officers and directors elected pursuant to such ownership and their effectuation of corporate changes when the occasion demanded. Thus Roger Milliken was president of all of the corporations except the Lauren Mills. In like vein a majority of the directors of each corporations, with one exception, are members of the Milliken family. And, as illustrated by the merger of the Cotwool and Deering-Milliken, treated more fully in the Supplemental Intermediate Report, the Milliken family could and did eliminate corporate lines where circumstances made such action advantageous. From this evidence we can only conclude the Milliken family had, and exercised, its ownership over all of the corporations which constituted the Deering-Milliken complex.

In the "crucial area" of common control over labor relations,[47] it is likewise clear that the Board's standards are met. Roger Milliken, the president of all of the corporations save one, exercised ultimate control over the labor relations of all of the corporations. Thus he received reports from each of the mills as to progress in reducing the number of jobs, the pay raises given, hours worked and job assignments, was asked for approval of various personnel actions, and made suggestions as to the hiring of personnel. More

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[46] *Ecusta Paper Corporation*, 66 NLRB 1204, 1212; *Calcasieu* Paper Co., Inc., 99 NLRB 794, 802, enforced 203 F. 2d 12 (C. A. 5); cf. *Dunspur Company, Inc.*, 114 NLRB 40, 41-42; *A. M. Andrews Co.*, 112 NLRB 626, 628-629; *Somerset Classics, Inc.*, 90 NLRB 1676, 1688, enforced 193 F. 2d 613 (C. A. 2); *Federal Engineering Co.*, 60 NLRB 592, enforced as modified 153 F. 2d 233 (C. A. 6).

[47] *Dearborn Oil and Gas Corporation, supra; Monsieur Henri Wines, Ltd.*, 44 NLRB 1310, 1314.

important, however, was Roger Milliken's participation in the area having the greatest impact on labor relations—the area of collective bargaining. Thus he circulated a memorandum and editorial which was obviously intended as a primer to the managers of the mills in combatting union organization. During the organizational campaign his pervasive influence was demonstrated by the statements of supervisory employees that Roger Milliken would close the plant rather than permit its unionization. Moreover, it was Roger Milliken who, with the approval of his family, decided to close the plant admittedly because the employees had exercised their rights under the Act and selected the charging party as their representative. And finally it was Roger Milliken who told a stockholder and director that he would not operate the mill so long as there was "seventeen percent of the hard core" labor people remaining in the mill.

From the above evidence, we conclude that Deering-Milliken, primarily through the person of Roger Milliken, exercised control over the labor relations of all of the corporations, including Darlington. Although the details of day-to-day personnel relations may have been, of necessity, conducted at the mills, it is manifest that the major decisions were exclusively in the hands of Roger Milliken. Under such circumstances it is clear that Deering-Milliken must assume responsibility for control of Darlington's labor relations.

There is abundant evidence that Deering-Milliken exercised even tighter control over the operations of the other corporations. It exercised complete control over their sales. The head of Deering-Milliken's Tax Department was an officer of each of the mills and as such supervised all tax matters for the mills. The Tax Department concerned itself with the accounting procedures, vacation plans, incentive compensation contracts for supervisors, and re-

viewed the drafts of minutes of stockholder and directors' meetings. Deering-Milliken's Insurance Department handled all insurance for the mills. Financial reports were rendered by the Sales Department. And other officers of Deering-Milliken also participated in the details of the operations of the other corporations.

Control was also exercised through the Deering-Milliken Service Corporation. Thus the Purchasing Department made all purchases of equipment and machinery for all of the mills. The Cotton Purchasing Department purchased all the cotton used by the mills, specified the proper mix of cotton for the production of particular kinds of cloth, and disposed of waste cotton. The Fiber Quality Control and Research Department advised the mills on the methods of getting the maximum efficiency from raw material, equipment and personnel. The Engineering Department performed similar services with respect to buildings and the physical plant. And the Placement Department oversaw the hiring of supervisory-trainees.

Roger Milliken himself participated fully in the control of the operations of the mills. Regular reports regarding operations were rendered to him. He required the mills to inform him of their capital expenditures and report on their success in job reductions. He, in turn, informed the mills on "policy" with respect to revealing information to competitors and payroll deductions for charitable purposes. The many memoranda emanating from Roger Milliken, were addressed to all of the mills, not to the individual mill. In short, Roger Milliken exercised close control over all of the mills alike in the entire Deering-Milliken group. We are therefore convinced that Deering-Milliken exercised sufficient control over the operations of all of the mills to meet the tests utilized by the Board.

Aside from the evidence set forth above, with respect to the individual factors demonstrating that the Deering-

Milliken group of corporations were one enterprise there is much which persuades us that Deering-Milliken and the corporations so considered themselves. In the many documents which form part of the record in this case repeated references are found to "our organization;" "Deering-Milliken Mills;" "Deering Milliken Group;" and "The Company." In describing movements from one mill to another the word "transfer" was utilized. In the booklet published by Deering-Milliken entitled "Fabric Magic By Milliken" there are repeated references to the "Milliken Mills," the "Milliken Operations," "Mills with Milliken," "Milliken's own industrial engineers," and statements such as "you made the mill grow like this—1865 one mill; now 29 mills." Such references are consistent only with the existence of a single, integrated enterprise.

Although we have thus found that Deering-Milliken and its affiliated corporations, including Darlington, constitute a single employer responsible for the unfair labor practices committed, the question remains as to what remedy is appropriate. As Deering-Milliken and the affiliated corporations occupy a single employer status with Darlington, we shall, of course, make them liable for back pay to the same extent as we have heretofore directed with respect to Darlington. Unlike Darlington, however, Deering-Milliken and the affiliated corporations[48] still exist.

It is therefore possible that even in the event Darlington does not resume its operations so as to enable the discharged employees to be reinstated there, the job rights of these discharged employees may still be afforded a measure of protection. We direct, therefore, that in the event the Darlington plant is not reopened, Deering-Milliken shall offer employment to the discharged employees, if they

[48]Since it appears from the record that Deering, Milliken and Company, Incorporated, was merged with Cotwool Manufacturing Company into a third corporation, Deering, Milliken, Incorporated, we shall make our order also run against the last-named corporation.

desire, in its other mills in South Carolina or adjacent states without prejudice to their seniority and other rights and privileges, to the extent that positions are available in such plants. Available positions shall be distributed among the discharged employees in accordance with Deering-Milliken's usual method of operation under curtailed production, without discrimination against any employee because of union affiliation or activities, following the system of seniority, if any, customarily applied by Deering-Milliken. However, in order not to injure innocent third persons presently employed in the other mills, we shall not require that such persons be dismissed or otherwise prejudiced in order to carry out the reinstatement ordered herein. Any remaining discharged employees for whom no work is available under the foregoing arrangement shall be placed upon a preferential hiring list, and shall thereafter, in accordance with such list, be offered employment in their former or substantially equivalent positions as such employment becomes available and before other persons are hired for such work.[49]

We shall also order the Respondent Deering-Milliken to offer to pay employees the travel and moving expenses entailed in moving their families and household effects to other mills in the event employees accept such offers of reinstatement.[50]

It has been found that the Respondents Darlington and Deering-Milliken violated Sections 8(a)(5) and (1) of the Act by refusing to bargain in good faith with the Union as the exclusive representative of the employees in the Darlington mills. As we have indicated above in our discussion of the remedial action to be taken by Respondent Darlington, it is impossible for us to accord to the Union the bargaining rights which normally attach to a Board

[49] *Sidele Fashions, Inc.*, 133 NLRB No. 49, enfd. 305 F. 2d 825 (C. A. 3).

[50] *Sidele Fashions, Inc., supra.*

certification unless the Darlington plant is reopened. Absent that contingency, however, we shall partially restore those rights by requiring Respondent Deering-Milliken to bargain with the Union for the purpose of reaching an agreement as to the mode of operation of the preferential hiring lists, and as to the terms and conditions under which the former employees of the Darlington mills may, if they desire, obtain employment at other mills in South Carolina and adjacent states.[51]

With respect to the liability of Roger Milliken, as an individual, we do not believe the charge filed against ". . . Roger Milliken, President . . ." is sufficient to support a complaint against Roger Milliken as an individual. Section 10(b) has long been regarded by the Board and the Courts as a statute of limitations and the test of the sufficiency of a petition to toll the running of such a statute has been stated to be (2 Moore's Federal Practice, 2nd ed., Sec. 4.44, pg. 1042):

> whether on the basis of an objective standard, it is reasonable to conclude that the plaintiff had in mind a particular entity or person, merely made mistake as to the name, and actually served the entity or person intended; or whether plaintiff actually meant to serve and sue a different person.

Here there is no cogent evidence that the Charging Union erred in naming Roger Milliken in his capacity as president of Darlington. The charge clearly names Roger Milliken as president, an office in which he served at the time, and there is no evidence that any other person of this name served the other respondents in any capacity. The charge itself, although filed against two entities and Roger Milliken, President, speaks in the singular of the "employer" and thus does not suggest that Roger Milliken, individually.

[51]Cf. *Brown Truck and Trailer Manufacturing, Inc.*, 106 NLRB 999, 1003.

was regarded as an employer separate and apart from his position as president. The offer of proof by the Charging Union at the first hearing which led to the remand for determination of the single employer status of Darlington and Deering-Milliken also indicates that Roger Milliken was charged, as President, because in that capacity he served as a connecting link between the various corporations. Applying an objective standard we conclude that it was intended to charge Roger Milliken in his representative capacity as President and not as an individual and that the charge will therefore not support the complaint.

ORDER

I. Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondents, Darlington Manufacturing Company, Darlington, South Carolina; Deering, Milliken and Company, Inc., New York, New York; and Deering, Milliken, Incorporated, New York, New York; their officers, agents, successors, and assigns, shall jointly and severally:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, AFL-CIO, as the exclusive representative of all the employees in the unit found appropriate by the Board, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(b) Discouraging membership in Textile Workers Union of America, AFL-CIO, or in any other labor organization of their employees, by a plant closing and by discharging their employees, or by discriminating in any other manner in respect to their hire and tenure of employment, or any term or condition of employment.

(c) Threatening to close down an operation or to blacklist the employees if they select a union as their collective bargaining representative, interrogating the employees concerning union membership and activities in a manner constituting a violation of Section 8(a)(1) of the Act, supporting a petition disavowing Textile Workers Union of America, AFL-CIO, as the collective bargaining representative of the employees, or ascribing the closing of the plant to the employees' union activities.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, in the event that the Respondents resume operations at Darlington, South Carolina, bargain collectively with Textile Workers Union of America, AFL-CIO, as the exclusive representative of the employees in the unit found appropriate by the Board, and embody in a signed agreement any understanding reached.

(b) Make whole all the employees who were on the payroll on October 13, 1956, for any loss of pay suf-

ferred by reason of the discrimination against them, and offer employment to all those employees, in the manner set forth in the section herein entitled "The remedy."

(c) Preserve and, upon request, make available to the National Labor Relations Board, or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary for determination of the amounts of back pay due under the terms of this Order.

(d) Advertise once each week for eight weeks in the "News and Press," Darlington, South Carolina, and in the "Florence Morning News," Florence, South Carolina, and mail to the last-known address of each employee on the payroll on October 13, 1956, copies of the notice attached hereto marked "Appendix A."[52] Copies of such notice shall be furnished by the Regional Director for the Eleventh Region and shall be duly signed by the Respondents' representatives.

(e) Notify the Regional Director for the Eleventh Region, in writing, within 10 days from the date of this Order as to the steps Respondents have taken to comply herewith.

II. Upon the entire record in the case and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondents Deering, Milliken and Company, and Deering, Milliken, Incorporated, shall take the following affirmative action, in addition to that set forth above, which the Board finds will effectuate the policies of the Act:

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[52]If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by substituting the words, "A Decree of the United States Court of Appeals Enforcing an Order" for the words "A Decision and Order."

1. Bargain collectively with the Textile Workers Union of America, AFL-CIO, to the extent required, with respect to the reinstatement of their employees in the manner set forth in the section herein entitled "The remedy."

2. Mail to the last-known address of each employee on the payroll of the mill at Darlington, South Carolina, on October 13, 1956, copies of the notice attached hereto marked "Appendix B."[53] Copies of such notice shall be furnished by the Regional Director for the Eleventh Region and shall be duly signed by the Respondents' representatives.

3. Notify the Regional Director for the Eleventh Region, in writing, within 10 days from the date of this Order as to the steps Respondents have taken to comply herewith.

IT IS FURTHER ORDERED that the Board hereby reserves to itself the right to modify the back pay and reinstatement provisions of this Order, if made necessary by circumstances not now apparent.

IT IS FURTHER ORDERED that the complaint against Roger Milliken, as an individual, be, and it hereby is, dismissed.

Dated, Washington, D. C. Oct. 18, 1962.

.....
Frank W. McCulloch, Chairman

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John H. Fanning, Member

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Gerald A. Brown, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

[53] See footnote 53, *supra*.

BOYD LEEDOM, MEMBER, concurring in part and dissenting in part:

I agree with my colleagues of the majority in this case, except in two respects.

Unlike them, I would find, in agreement with the Trial Examiner, that Darlington and Deering-Milliken and its affiliated corporations did not occupy a single-employer status and, as Darlington alone engaged in the unfair practices found, I would dismiss the complaint as to the remaining corporate respondents. I believe that no single-employer status exists for the reasons indicated by the Trial Examiner in his Intermediate Report and particularly for the reason that there is here an absence of common ownership within the meaning of the decided cases. Emphasizing this conclusion is the fact that, while members of the Milliken family own stock in all the corporations involved, all such members do not own stock in each of the corporations. It would, in these circumstances, be an extension of the decided cases to hold that there was, in fact, common ownership of these corporations.

I further depart from the majority with respect to the backpay remedy. My colleagues order Darlington to provide backpay from the date of the discrimination found until the discharged employees are able to obtain substantially equivalent employment or are placed on a preferential list. For the reasons stated in *Barbers Iron Foundry,* 126 NLRB 30, and in the main opinion in *M. Yoseph Bag,* 128 NLRB 211, I would award backpay only from the date of the discrimination to the date when the Darlington plant closed.

In all other respects, I concur in the majority decision.

Dated, Washington, D. C. October 18, 1962.

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Boyd Leedom, Member

NATIONAL LABOR RELATIONS BOARD

Opinion of Member Rodgers

PHILIP RAY RODGERS, MEMBER, dissenting:

The principal issue in this case, whether Darlington, Deering-Milliken, and the various other named corporations, constitute a single employer within the meaning of the Act, is not, as the Trial Examiner has fully stated, entirely free from doubt.

However, the burden of proof on this issue rests upon the General Counsel, and like the Trial Examiner, and unlike my colleagues, I am constrained to find that, on the record before us, that burden of proof has not been met.

This conclusion is, I feel, consistent with the Board's holding in the recently issued *Knight Newspapers*[54] case in which it was pointed out by the Board that, notwithstanding the fact of single ownership, [a fact which I might interpolate is open to serious question here] the *potentiality* of common control and integrated operation is not a sufficient basis to support a finding of single employer. I do not believe this case is substantially different, factually, from the newspaper case, in that while there is much to indicate a protentiality of control and integration, the actuality of such elements has not been established.

I would therefore conclude, on the basis of this record, that only Darlington is properly before us in this case. I would dismiss the complaint as to Deering-Milliken and other Respondent Corporations.

Now as to the case against Darlington, I agree with my colleagues insofar as they find a violation of 8(a)(1) based upon the interrogation of employees by the Respondent and the statements made before and after the representation election.

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[54] *Knight Newspapers Inc.*, 138 NLRB No. 137.

Opinion of Member Rodgers

However, as to the finding of the 8(a)(3) violation, and as to the remedy ordered by the majority, I must respectfully disagree.[55]

The question to be resolved with respect to Darlington is the important and fundamental question of whether or not Darlington violated the Act by liquidating its plant and going out of business. My colleagues have found that such a going out of business constitutes a violation of law which must be remedied by this Board. I do not agree.[56] For—constitutional issues aside—there is nothing contained in the basic Act nor in any amendment thereto which limits an employer's right to go out of business at such time and under such circumstances as he chooses.[57] As stated by the

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[55]It goes without saying, of course, that I disagree with so much of the remedial order which is predicated on the majority's finding of "single employer," and the resultant involvement of Deering-Milliken and the other corporations in remedying the unfair labor practices found by them.

[56]I deem it an exercise in semantics to indicate, as some have done, that while it constitutes a violation of law to go out of business, such action constitutes a violation for which no remedial order can issue by virtue of the fact that the Respondent "has gone out of business." Likewise, I deem it an exercise in semantics to say that the law does not interfere with the "right" to go out of business, but that a remedy in behalf of any aggrieved party will attach if the right is exercised. Surely the type of remedy being applied in this class of case, involving, as it does, heavy back pay liabilities which may well run on indefinitely unless the enterprise is reestablished and the employees rehired, is sufficiently harsh to render illusory the existence of, and effectively extinguish the exercise of, any such "right" to go out of business.

[57]While the legislative history of the law reflects no detailed consideration of this point, such comments as can be found indicate that Congress gave no serious consideration to the limiting of so fundamental a right as the employer's right to go out of business. For example, Senator Walsh, Chairman of the Senate Labor Committee, during the debate on the Wagner Act stated: "Mr. President, there are some fundamental rights an employer has, just as there are rights an employee has. *No one can compel an employer to keep his factory open.* No one can compel an employer to pay any particular wage. No one can compel an employer to hire others in addition to those he sees fit to hire. So with an employee; no one can compel him to work, no one can compel him to go on strike, no one can compel him to leave his work.

Court of Appeals in *N. L. R. B.* v. *New Madrid Manufacturing Company and Jones Manufacturing Company:*[58]

> But none of this can be taken to mean that an employer does not have the absolute right, at all times, to permanently close and go out of business, or to actually dispose of his business to another, for whatever reason he may choose, *whether union animosity or anything else,* and without his being thereby left subject to a remedial liability under the Labor Management Relations Act for such unfair labor practices as he may have committed in the enterprise, except up to the time that such actual and permanent closing or true and bona fide change in ownership has occurred. No one can be required to stay in private business, and no one can be prevented from permanently closing or abdicatingly selling such a business. And the Act affords no basis on which to order a person to reinstate employees in a business which he has, with plain finality, put out of existence, or which he has actually disposed of to another, and as to which he neither in law nor in fact possesses any power over the operations of his successor, either of management right in general or of labor-relations control in particular. Cf. *Southport Petroleum Co.*, v. *N. L. R. B.*, 315 U. S. 100, 106, 62 S. Ct. 452, 456, 86 L. Ed. 718, 726. No more, in our opinion, can the

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No one can keep an employer from closing down his factory and putting thousands of men and women on the street. So in dealing with this bill we have to recognize those fundamental things, and we have not gone into that domain. All we do is to remove the barriers that have kept employees away from their employers, which have prevented collective bargaining, which have resulted in strikes without any attempt to negotiate. All we have done is to promote the orderly processes of collective bargaining." [Emphasis supplied.] 79 Cong. Rec.. 7673, 74th Cong., 1st Sess. (1935).

Also, Congressman Griswold, during the House debate on the same bill stated, in answer to a question: *"There is nothing in the bill to keep an operator from closing his plant. * * *"* [Emphasis supplied.] 79 Cong. Rec. 9782, 74th Cong., 1st Sess. (1935).

[58]215 F. 2d 908, 913-914 (C. A. 8).

Act be said to contain any basis to assess remedial back-pay against such a person, beyond the date of his permanent closing *or* abdicating sale of the enterprise. [Emphasis supplied.]

Dated, Washington, D. C. October 18, 1962.

.....

Philip Ray Rogers, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or in any other labor organization of our employees, by plant closings and discharging our employees or by discriminating in any other manner in respect to their hire and tenure of employment, or any term or condition of employment.

WE WILL NOT threaten to close down a plant or operation, or blacklist our employees, if they select a union as their collective bargaining representative, interrogate our employees concerning union membership or activities in a manner constituting a violation of Section 8(a)(1) of the Act, support a petition disavowing bargaining representative of our employees, or ascribe the closing of our plant or operation to our employees' union activities.

WE WILL NOT in any other manner interefere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an

agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

WE WILL, in the event that we resume operations at Darlington, South Carolina, bargain upon request with TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, as the exclusive representative of our employees in the bargaining unit hereinafter described, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and embody in a signed agreement any understanding reached. The bargaining unit is:

> All production and maintenance employees at Darlington Manufacturing Company's textile plant at Darlington, South Carolina, including firemen, slasher foremen, and supply room clerks, but excluding office clerical employees, professional employees, watchmen, guards, and all supervisors as defined in the Act.

WE WILL make whole all the employees who were on our payroll on October 13, 1956, for any loss of pay suffered as a result of our discrimination against them.

WE WILL, in the event we resume operations at Darlington, South Carolina, offer reinstatement to all employees who were on our payroll on October 13, 1956, without prejudice to their seniority and other rights and privileges.

All our employees are free to become, remain, or to refrain from becoming members in good standing in TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or in any

other labor organization, except to the extent that such right may be affected by an agreement in conformity with Section 8(a)(3) of the Act.

DARLINGTON MANUFACTURING COMPANY

DEERING, MILLIKEN AND COMPANY, INCORPORATED

DEERING, MILLIKEN, INCORPORATED

Dated ..... By .....
(Representative) (Title)

NOTE: We will notify any of the above-named employees presently serving in the Armed Forces of the United States of their right to reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1831 Nissen Building, 310 West Fourth Street, Winston-Salem, North Carolina, Tel. No. 724-8356, if they have any question concerning this Notice or compliance with its provisions.

APPENDIX B

NOTICE TO ALL EMPLOYEES
OF DARLINGTON MANUFACTURING COMPANY
PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify the employees of Darlington Manufacturing Company that:

> WE WILL bargain upon request with TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, to the extent required with respect to the mode of operation of a preferential hiring list by which the employees formerly employed by the Darlington Manufacturing Company at Darlington, South Carolina, may obtain employment at other of our mills in South Carolina and adjacent states.

DEERING, MILLIKEN AND COMPANY, INC.
DEERING, MILLIKEN INCORPORATED
(Employers)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1831 Nissen Building, 310 West Fourth Street, Winston-Salem, North Carolina, Tel. No. 724-8356, if they have any question concerning this Notice or compliance with its provisions.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

DIVISION OF TRIAL EXAMINERS

WASHINGTON, D. C.

DARLINGTON MANUFACTURING COMPANY and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO	Case No. 11-CA-1071

Mr. John M. Dyer, for the General Counsel.

Messrs. Price & Poag, of Greenville, S. C., by *Mr. J. H. Price* and *Mr. J. D. Poag;* and *Mr. Stuart N. Updike* and *Mr. John R. Schoemer, Jr.,* of New York, N. Y., for the Respondent.

Messrs. Townley, Updike, Carter & Rodgers, of New York, N. Y., by *Mr. Stuart N. Updike,* for Deering, Milliken & Co., Inc., and Roger Milliken, its president.

Mr. Thomas A. Wofford, of Greenville, S. C., appearing specially for Deering, Milliken Service Corporation.

Mr. Max Zimny and *Mr. Benjamin Wyle,* of New York, N. Y., and *Mr. Boyd E. Payton* and *Mr. Bruce E. Davis,* of Charlotte, N. C., for the Union.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

BUCHANAN, Trial Examiner: With the closing of the mill, the salient issue in this case is whether such closing and the discharge of employees was discriminatory in violation of Section 8 (a) (3) of the National Labor Relations Act, as amended, 61 Stat. 136. The questions of violation of Section 8 (a) (1) of the Act by interrogation, threats, surveillance, support of a disaffiliation petition, and statements connecting plant closing with the Union victory; and of Section 8 (a) (5) by refusal to bargain have become, relatively, less significant.

This is pointed up by the problem of remedy which must arise with any finding of violation of Section 8 (a) (3). The major problem in the case, however important, interesting, and difficult the other questions involved, is to find an adequate and lawful remedy for discriminatory discharges where the employer has discontinued its operations and sold its plant and equipment. The Company has no other mill or operation and, we are told, does not intend to operate this mill again. Postponing consideration of the question whether the Act was violated,[1] our immediate concern is that, after it is found that violation occurred, the element of continued operation, but for the violation, and the period thereof are left undetermined.

A different aspect is pointed up by the General Counsel's argument, underscored by the Union, that a violator should not be permitted to go scot-free, and that a requirement be imposed of payment into the indefinite future or at least for a limited but fixed period. But this would reflect a punitive aspect which the statute lacks.[2] The prob-

[1] This, of course, was not the order in which the questions have in fact been weighed and determined. But, without minimizing the others, the most difficult problem before us is that of the remedy.

[2] *Consolidated Edison Company*, 305 U. S. 197, 235-236; *Republic Steel Corporation*, 311 U. S. 7, 11-12.

lem is not solved by eloquent arguments which would show that the employees are entitled or are not entitled to continued payment of wages according to some abstract notion of "elementary justice" or on the basis of a sympathetic understanding which may favor one side or the other.

However valiant the efforts, which I welcomed and encouraged so that an effective and lawful remedy might be fixed if violation were found, it has not been established with the certitude or definiteness which the law requires that, but for the discriminatory motive, the plant would still be in operation or that it would have continued in operation in whole or in part to a certain date after operations were in fact terminated. The Board may apply its expertise in determining whether a violation has been committed and also in directing a remedy. But not even expertise can substitute for or provide proof of loss where none is otherwise shown. Neither may we, as we seek to effectuate the policies of the Act, transcend the requirement that the extent of loss be shown at least generally if there is to be a direction to make whole.

Even with respect to those operations which first ceased, in the spinning room, since an inventory of warp yarn had been accumulated for use on wider looms which had been purchased—even as to such operations, while their termination is found to have been discriminatory and part of the overall violation, we cannot say that but for such violation those operations would have continued for any definite additional period.

It follows that, despite a finding of discrimination, there can be no apparently effective remedy: the company is not to be directed to reemploy (except in the event, not now foreseen, that it resumes operations) or to make whole by back pay. One recalls that in other branches the law allows reasonable compensation although opinions may differ as to the amount. For example, reimbursement is permitted

for loss of goodwill and even for loss of profits; in some jurisdictions recovery for the latter may be denied because of the speculative nature of any determination, while in others, a definite basis for recovery being recognized, it is permitted although opinions may differ as to the amount to be allowed. To cite one additional instance, inexact determinations are made in compensating for injuries and suffering in personal injury actions, but only after the general extent of the loss or damage has been ascertained. It can be seen that in such cases there is a fixed basis for the determination even if that basis allows for different evaluations. Where, after the decision to compensate, there is a basis or rule, sometimes inexact in its application, for determining the amount of compensation, the law proceeds further and declares that amount. In the instant case, there can be a decision to compensate; but we have no rule or basis for fixing the amounts. Despite its ability to clear many obstacles, the concept of making whole is too unruly a steed to be allowed to take us in unmarket directions and over uncharted terrain without the restraint of a guiding hand.

It has been urged that we proceed on the assumption that, but for the discrimination, the plant would still be operating, as it had been; and that the remedy be fixed accordingly. Alternatively, that back pay be imposed to cover an additional year's employment. Or, should those proposals be rejected, that compensation be paid for 22 weeks, the period during which unemployment compensation payments are locally made. There is as much basis for adopting one of these proposals as there is for any of the others; but no sufficient basis for any. There is no more basis for directing pay to the date of closing, for those employees who were earlier discharged, between the date of decision to close and the date of closing, as their work ran

out; or supplemental pay for those who worked fewer hours. While the shutdown itself is found to be discriminatory, there is no evidence of discrimination in the manner in which that shutdown was effected. Orderly liquidation calls for progressive shutdown by jobs and departments. Only if a later date for closing were determined could it be shown that those first laid off would have ben employed longer than they were; and in that case a similar finding could be made for the other employees.

In the *Mount Hope* case,[3] reinstatement was directed with back pay "to the date when (the respective employees) normally would have been discharged" absent the discrimination. It was there left for later determination whether economic factors would have dictated later closing and, if so, when. Setting this aside, the Circuit Court commented with respect to the quoted phrase: "How the latter date could possibly have been determined the Board does not venture to say and the record does not indicate."[4] The General Counsel admits that it is "impossible" to direct reinstatement and back pay as if the Company were still operating, in effect to put Humpty Dumpty together again. The Board did not seek review of the Court's decision in the *Mount Hope* case (I draw no conclusion from this), nor has it had occasion to declare itself on this point since that decision. The General Counsel and the Union here appear to have accepted the Court's decision in this connection as, in proposing remedies, they have made an effort to show that the mill would have or should be considered likely to have operated for certain periods beyond the dates when the various operations were successfully terminated.

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[3] *Mount Hope Finishing Company*, 106 NLRB 480, 500.

[4] *N. L. R. B.* v. *Mount Hope Finishing Company*, 211 F. 2d 365, 369 (C. A. 4). (The basis for the reversal of the finding of discrimination in that case, that long before the union made its appearance management was seeking another location, is not here present.)

Since we here seek to make whole, there is no basis for directing reinstatement or payment of lost earnings without the date to which the employees would otherwise have worked and when the plant would otherwise have closed if at all. This brings us back to the *Mount Hope Finishing* case. Neither the arguments nor the proposals submitted to me warrant a back pay order even though, counsel for the Company to the contrary notwithstanding, an "injury cognizable by law has occurred." It seems that this is not a subject for the application of either wit or wisdom in setting a remedy while the case is decided. Whatever ingenuity may accomplish as the Board or the Court may seek to effectuate the policies of the Act, I transmit the case in reliance on existing authority.[5] We leave to other authority the analysis of conditions which prompt and develop from such

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[5]In thus relying on the final decision in the *Mount Hope* case on the question of back pay, I would point out that the question which the Court there posed concerning determination of the date when employees "normally would have been discharged" was not here answered although specifically put to counsel. *Tennessee-Carolina Transportation, Inc.*, 108 NLRB 1369, cited by both the Union and the Company, is readily distinguishable.

In connection with the question of remedy, I would also refer to *U. S. v. Minute Maid Corp.* (Civil No. 6429-M, S. D. Fla.) where the consent judgment provided, *inter alia*, for maintenance of facilities, as follows:

> (C) Defendant Minute Maid shall take such steps as are necessary to maintain said frozen concentrate facilities at the standard of operational performance for the production of frozen concentrates in effect at the time of the entry of this Final Judgment. Pending such disposition of facilities defendant Minute Maid shall not permit said facilities to be diminished in capacity or to be turned to uses other than the production of frozen concentrates, where such use would in any manner, impair the capacity of such facilities for the production of frozen concentrates.

That wholly different situation may provide a point of reference for further consideration of adequate remedies in unfair labor practice cases. But what some will regard as precedent will be, by others, distinguished; consent in one case does not indicate authority to decree in another.

a situation, and the decision whether the Act should be amended.

A hearing was held before me at Florence and Darlington, South Carolina, from January 15 to 17 and February 19 to 27, 1957, all dates inclusive. Prior to the hearing and at the Union's request, subpoenas and subpoenas duces tecum were issued addressed to Deering, Milliken Service Corporation; Deering, Milliken & Co., Inc., and Roger Milliken individually and as an officer of Deering, Milliken & Co., Inc. Petitions were thereafter filed with the Regional Director to revoke said subpoenas, and were referred by the Regional Director for ruling by the Trial Examiner at the hearing. The petitions were considered by me together with the Union's answer thereto. In the arguments concerning the subpoenas, no distinction was made between the subpoenas ad testificandum and the subpoenas duces tecum. With respect to the former, Roger Milliken was present and testified at the hearing; whatever his capacity or position, his examination was limited, as noted, to the issues before us.

It appears that the Regional Director had earlier denied the Union's application to take the deposition of Roger Milliken and the two other companies. On the petitions to revoke subpoenas, the General Counsel took no position. The amended charge herein was brought against the Respondent Company and also against Roger Milliken, its president, and Deering, Milliken & Co., Inc.; but the complaint was issued against this respondent only. It is evident that from the inception of the proceeding there has been a difference between the General Counsel and the Union concerning the scope of the proceeding. This difference was further manifest as counsel for the Union sought to extend examination of witnesses despite the limitation of the complaint. It is the General Counsel's function to determine who shall be respondents, and his is the primary burden of presenting the evidence. His position is to be accepted rather than the

charging party's where there is a difference between the two. (The General Counsel further informed us that the Board has investigated and at the time of hearing was still investigating the relation between the Respondent and the other two companies.)

With that limitation and the further agreement at the hearing to avoid litigation of events at other mills, the attempts by the Union, without the support of the General Counsel, to extend the scope of the hearing and of examination of witnesses were barred. Thus, for example, he offered statements by Milliken in October 1955 and January 1956 as evidence of the latter's hostility to union labor. But these statements made reference to mills elsewhere, and the General Counsel noted that they should be taken in their entirety or not at all. Without exploring the situation at those other mills, we cannot determine whether the facts there justified critical remarks or whether these merely reflected hostility. There would thus be no basis for evaluating such statements. Further details concerning the respective positions and the rulings made, including the fact that Deering, Milliken Service Corporation was not properly served with subpoenas and the fact that the Union did not claim or show that it had material information but was merely exploring possibilities for their potential relevance, were set forth on the record.

After lengthy and eloquent argument by counsel for the Union and for the respective subpoenaed persons, I granted the petitions to revoke, with a statement of the grounds for the rulings, which referred to the various points raised by counsel. While the exclusion by the General Counsel of the issue of privity between the respondent company and other companies has not prevented findings of violation, it has perhaps limited the remedy since we have no evidence that other mills are in privity with the Respondent.

Pursuant to leave granted to all parties, briefs have been filed by the General Counsel, the Company, and the Union, the time to do so having been extended.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact (with reasons therefor)

I. The Company's business and the labor organization involved

It was admitted and I find that the Company, a South Carolina corporation with principal office and place of business in Darlington, South Carolina, manufactures and sells cotton greige goods; and that during the calendar year it manufactured and sold finished products valued at more than $6,500,000, more than 90 percent of which was sold and shipped to customers outside the State, and purchased raw materials, supplies, and equipment valued at more than $3,380,000, more than 92 percent of which was shipped in interstate commerce to the Darlington plant from points outside the State. I find that the Company is engaged in commerce within the meaning of the Act.

It was admitted and I find that the Union is a labor organization within the meaning of the Act.

II. The unfair labor practices

A. Outline of events

The Union initiated its organizing campaign at the Company's plant in or about March 1956. Some 16 meetings were held between May 6 and September 2, all in a public park outside the town of Darlington. On May 22, the Union sent to the Company a letter claiming that a majority of the employees had joined the Union, and requesting recognition and a collective bargaining conference.

On the following day the Union filed a representation petition with the Board. After a hearing on June 19, the Board, on August 24, issued its Decision and Direction of Election. The unit, admitted herein to be appropriate for the purposes of collective bargaining, was therein fixed as follows:

> All production and maintenance employees at the Darlington plant, including firemen, slasher foremen, and supply room clerks, but excluding office clerical employees, professional employees, watchmen, guards, and all supervisors as defined in the Act.

The election was held on September 6: of 523 eligible voters, 256 voted for the Union, 248 against. On September 11 the Company objected to the election, but the Board's Acting Regional Director, on October 8, recommended that the objections be dismissed. (The Company did not produce any witnesses in support of its objections to the election since at the time of the investigation there was a recommendation from its Board of Directors that the plant be liquidated. We need not decide whether, as the General Counsel claims in the face of a stipulation as above noted, the filing of the objections was a dilatory tactic by the Company. The refusal to bargain is found, *infra*, to have occurred on September 12, when the Board of Directors met, the day after the Company filed its objections.) On October 24 the Board issued its Supplemental Decision and Certification of Representatives, in which the Union was certified as the collective bargaining representative of the employees in the unit.

Between September 7 and 10 Milliken, the Company's president, arranged for a meeting of its Board of Directors for September 12, at which time he submitted and the Board adopted a recommendation to the stockholders that the plant be liquidated. Thereafter the Company accepted no new orders, there being sufficient orders on the books to keep

the plant in full operation for a time. On October 17 the stockholders voted to shut down operations and liquidate the plant. The plant was thereupon advertised for sale at public auction. Beginning on October 18, as the material on hand was utilized and the work ran out, employees were discharged and departments closed, and all operations were terminated on November 24. At the auction sale on December 12 and 13 the plant was offered for sale as a whole but then sold piecemeal for a greater sum. There is no claim that the sale was not to *bona fide* purchasers for value.

B. The alleged violation of Section 8 (a) (3)

Without consideration of interests and associations, events, or statements elsewhere, the General Counsel proved his case that the plant was closed and the employees discharged because of union membership and other lawful concerted activities. Counsel for the Union, as did a witness on the stand, charged Milliken with lack of regard for employees' welfare and undue concern with return on investment. This is not the forum to weigh, much less to judge, an investor's attitude. But as more emphasis is thus placed on financial consideration, there tends to be a detraction from the significance of any discriminatory intent. Despite these charges, the finding here will not be based on either counsel's argument or the witness' characterization.

Since the Korean War the industry generally and the Company in particular had faced constant difficulties. It is unnecessary to recount here the detailed evidence, testimonial and documentary, which I have carefully parsed, or to recapitulate the expert analyses submitted by counsel. Conditions varied from year to year, sometimes better than in 1956, sometimes worse; as much may be said of the outlook or prospects at various times. The facts in this connection do not themselves indicate that the Company was compelled to or did, because of either economic factors or

outlook for the future (aside from election indications), decide in 1956 to discontinue its operations. This finding, based on the mass of evidence submitted, is bolstered by the Company's own decisions and plans for the future, made prior to the date of the election, as we shall soon see.

Most impressive was the ingenuity displayed by the Company through the years as it turned to new methods and new products to meet competition. The evidence in this connection is an eloquent tribute to the competitive free enterprise system. Coming to 1956, there is no evidence that ingenuity suddenly vanished. On the contrary, the great abilities which had enabled the Company to overcome past obstacles reasonably warranted the expectation of continued success into the immediate future at least. Having said this, we must add that the Company had every right in 1956 and earlier to cease operations for economic or any other nondiscriminatory reasons—even if someone had decided that he was "just too tired" to exercise his ingenuity. Not only would I not suggest that operations were highly profitable; but even if they had been, there would be no concern over a nondiscriminatory suspension or cessation of business. Reference has been made to these economic conditions because they have been cited in defense to the charge of violation. In stating this defense, we must note that the Company does not rest on these conditions *per se* but rather points to them as background or as a cumulative cause when taken with its interpretation of the election results, which is considered *infra*.

Whatever the economic circumstances, up to the date when the Board of Directors recommended liquidation, physical improvements were made at the plant and new equipment was being purchased and installed with the evident intent to continue the plant in operation. Previously authorized, the improvement program was still in progress up to the election although the Board of Directors who thereafter decided to liquidate could earlier have discontinued that

program. Whatever the economic circumstances, until the election, orders were taken and accepted, clearly with the intent to continue the plant in operation, and warp yarn had been accumulated for the new looms which were to be installed. One need not gainsay these economic circumstances. But, although the balance sheets and the related statements of income and surplus show that there was and for a long time had been economic basis for liquidating and that the Company could have relied thereon, the record shows that they did not themselves compel or prompt the liquidation.[6] If other mills were compelled, by economic factors, to close, it is true as its counsel argues that the Company here did not have to stand like a soldier until struck down. It might have sought cover—and discontinued operations. But the new factor here was not failures elsewhere and the Company's inability to keep pace; it was the "Boo!" of the election. The deciding or triggering element in the steps taken to liquidate was the outcome of the election. Because of the emphasis placed on these economic factors as the evidence was presented and because of their importance in the conduct of the business, it should be made clear again that the issue before us is not so much whether the officers, directors, and stockholders of the Company were correct in their beliefs concerning economic conditions and outlook as whether it was those beliefs or discriminatory motives which prompted the shutdown and liquidation.[7]

We need not, as we might, rely on the very time sequence, the Company's Board of Directors recommend-

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[6]If termination is due partly to union activities and partly to acts or conditions which would warrant lawful discharge, the Act is violated. *N. L. R. B.* v *Jamestown Sterling Corporation*, 211 F. 2d 725, 726 (C. A. 2).

[7]Under the principle of *Rubin Bros. Footwear, Inc.*, 99 NLRB 610, we would consider, if necessary, whether the Company had a valid basis for such appraisal as would have warranted a shutdown for economic reasons.

ing, immediately after the Union won the election, that the plant be closed and the Company liquidated, as proof that the Company's decision and action were based on organization of the employees. Milliken specifically declared the effect of the designation of the Union as collective bargaining representative even while he claimed that it was and must be considered with the other conditions existing. Apparently recognizing that "The abruptness of a discharge and its timing are persuasive evidence as to motivation,"[8] the Company ably advances the contention that its action on September 7 and 12 and thereafter was based on conditions *dehors* the election, and that the election merely emphasized those conditions; the defense being that the decision to shut down was based on economic factors, and the election merely aggravated the situation. The Company, we are told in this connection, considered to be most important "the attitude of the worker toward his job." But whatever the phraseology, and I am quite willing to accept any other which will correctly represent the facts and the evidence, it is clear that the immediate and the moving factor was the election result.

On the morning of September 7, the day after the election, Milliken was in formed of the election tally. He requested his attorney, Poag, to come to Spartanburg, North Carolina, and later that day they there discussed the matter. In response to Milliken's question, Poag explained that the Union had won the election because the union organizers had built up the employees' resistance to the Company's "program of work assignment changes in line with the installation of new machinery"; Poag further declared his opinion that much resistance meant that the employees "would not cooperate with the installation of work assignments with the new machinery," and that the union literature

[8] *N. L. R. B.* v. *Montgomery Ward & Co., Inc.*, F. 2d , March 18, 1957 (C. A. 2), citing *E. Anthony & Sons* v. *N. L. R. B.*, 163 F. 2d 22, 26-27 (C. A. D. C.).

had created an obstacle in the minds of the employees by opposition to what it termed the stretch-out and by its emphasis on increased wages. (We shall further consider, *infra*, the historical "hard core" of resistance.) In response to Milliken's question, Poag agreed that the Union's election victory foretold additional resistance with the result that the Company would not be able to make its production competitive.

Milliken reviewed in his mind the various economic factors, and then over the telephone discussed all of the considerations with three of the Company's directors in New York, as well as with the successor, later elected, to one of them. It was tentatively agreed to call a meeting of the Board of Directors for September 12, and with agreement obtained on September 10 from the three directors in Darlington, the meeting was called and held. (It appears from the testimony of Oeland, treasurer of the Company, that the local directors were not told before September 12 what the purpose of the meeting was.) As these events are appraised, we should note Milliken's testimony that the election did not cause the liquidation; but it constituted a factor in calling the meeting of the Board of Directors, and further that it caused a review by the directors of all of the factors. This was a special meeting; not one called in the usual course or in advance of the closing of the Company's fiscal year.

But as we have seen, and even if we accept the Company's interpretation of and conclusions from the financial data which it submitted, the various factors and conditions cited, including keen competition and allegedly low earnings but excluding the election and its interpretation, had faced the Company for a long time—certainly through a period during which it made permanent improvements and planned more. (Concerning the financial data submitted, where comparison is made with respect to earnings at various plants,

consideration must be given to the fact that basic conditions were not alike at those plants. Thus, the mills differed in size and presumably in setup and extent of mechanization, and certainly in the types and quality of their products.) Whether in 1956, 1954, 1952; or any other time, the Company could have pointed to obstacles apparently insurmountable, and to difficult conditions in the industry as a whole. We could not, nor need we, have shown how the various earlier problems were to be solved. We need point out only that the Company itself in 1956 and up to the election had indicated its willingness to meet all of the obstacles and solve all of the problems which it has cited (except the problem which, in its opinion, was indicated by the election results themselves). I do not minimize these. Nor need I find that the Company could have successfully overcome all difficulties which it faced in 1956. It may be that, absent the election, a decision would lawfully have been made to shut down in 1956 or shortly thereafter. (This last issue, left open, has a bearing on the remedy.) No more than by the Union's propaganda to employees, *infra*, are we to rely on or be affected by the auctioneer's puffing of the mill as modern and up-to-date or the Company's news release issued with the sale in mind. For present purposes I find only that the Company's decision to shut down was an about face motivated by its employees' concerted activities as reflected in the election results. The extent of this about face is reflected in the fact that 523 employees were on the payroll just before the plant closed as compared with 550 at peak production. (These figures appear to include only employees in the unit. Very slightly different figures were also mentioned.) The plant operated on 3 shifts, 6 days per week, for a total of 144 hours per week generally and until September 12.

The limitation on improvements, which the construction, shape, and age of the building imposed, had previously been considered by the Company. These conditions had not

prevented the extensive improvements made to the date of the Board of Directors meeting. If the directors had several times previously discussed the matter of additional improvements and "felt that the future was too uncertain, and the facts concerning the building, itself, were too adverse to justify making such an expensive factor (or investment) whenever it was brought up," these conditions were not the moving consideration on September 12. As much can be said of the other factors cited such as the trend toward wider cloth, other mill closings, falling prices, and the number of new styles being produced; all had been considered, the improvement program extended, and plans made and carried out to continue operations. (Even had new conditions or factors developed, the triggering element was, as we have and shall again see, the election results.)

A textile engineering survey had been made for the Company in the summer of 1955. Some improvements were thereupon made with the evident intention to continue operations despite construction handicaps. As for disappointment in the lack of progress following installation of improvements, this had been noted and discussed through the years.

The election was again underscored for its evidence of uncooperative attitude when, although the rate of earnings at the mill was cited as one of the factors which dictated the closing here, Milliken explained that he proceeded elsewhere with a modernization program despite a lower rate of return—because the workers there were more cooperative. The cooperation shown at Darlington, or the lack of it, had not prior to the election cast the situation in a light worse than existed at the other plant. Certainly a modernization program had also been followed at Darlington.

While included in the many factors cited by the Company but which have been found not to have triggered the

shutdown and discharges, three so-called "new" factors should perhaps be further considered if only because of the greater emphasis placed on them at the hearing and for the possibility that, arising later than the other factors, they rather than the election results may have prompted the shutdown. (In any event we would have to remember Milliken's testimony concerning the effect of the election and the further fact that although these new factors had faced the Company prior to the election, it had nevertheless planned to continue production.)

One of the new factors which the Company faced was, as Milliken testified, a projected loss of 6 cents per pound on the products which it manufactured in 1956 if they were carried into 1957 with the same costs and the same prices. (We need not consider whether the capital improvements made in 1956, which indicate the intention to continue in business, were included in projecting a loss of 1957.) From the fact that the Company had in prior years found it necessary to change its construction or products, one can reasonably infer that losses were at those earlier times also anticipated if the then current constructions were continued. This condition in 1956 was therefore not a new factor. The Company might have continued as in earlier years and might have developed new and profitable constructions on 1957 as it had before. The history of production and sales as detailed in the record indicates that a regular and unchanging element was the factor of change. Further in connection with this projected loss, the drop in market price had been steady through the first 6 months of 1956 and therefore hardly a new factor in September. A loss projected for the future would be based on the assumption that the price would remain the same, whereas prices fluctuate; it would also assume that, while prices continued lower, costs would remain the same. Actually, the $480,000 annual loss or difference to the Company

suggested by Milliken on the basis of the drop in prices between January and June was not realized. A loss of $40,000, projected for 1956 by Oeland at the September meeting, had been considered in August by Milliken but had not apparently been discussed with the other directors. On the other hand, Oeland had not anticipated a shutdown, but was planning further improvements.

A second factor which the Company faced in 1956 was a wage increase granted at other mills and the loss which would result were it granted at Darlington. Some may view such an increase as an additional burden; others as an indication of a better outlook. But however, this might be construed, there was no requirement that an increase be granted. Any concern which the Company may have had in this respect could have been made known to the Union in an least preminimary exploration during the course of collective bargaining. Whether or not the Company had maintained a competitive wage level in the past, there was no sufficient basis on which the directors, in Milliken's words, "could fairly conclude that they were either going to have to raise wages or face an expensive strike." Campaign propaganda to the contrary notwithstanding, the Company, had it been willing to recognize and negotiate with the Union, could have *attempted* to obtain information and even a possible commitment on this item. The increase not granted during such discussion, that element of loss would be nonexistent. (It appears from later testimony by Milliken, that the Company had been paying wages higher than the average for the industry in South Carolina. This would suggest less need for an increase or need for less of an increase to maintain a competitive wage level.[9]

[9] Although here and elsewhere specific factors or issues are considered, we must not lose sight of the determining point: the results of the election prompted the action taken.

The third new factor cited was the increase in textile imports from Japan. Figures submitted appeared to include textiles of a type different from those manufactured at Darlington. But whatever those figures do show, it appears that the great threat and actual increase in imports had occurred at the end of 1955 and the beginning of 1956. Despite any problems caused by and the results of Japanese imports, and whatever the expressions of optimism or pessimism, in government circles and in the textile industry, the Company had continued to operate and, into the beginning of September, had no intention of discontinuing. There was limited reference to other mills in this connection, no objection being made thereto presumably because, and correctly if so, whatever the overall situation at those other mills, the parties in interest at those mills, including Milliken, who has interests in many, believed that the threat of Japanese competition in 1957 did not preclude the wage increase there granted. It does not appear that production and earnings outlook at these other plants differed from those at Darlington, or that the import problem here was more serious. (Milliken testified that he was not encouraged by the statement by a government official in September 1956 that the government was seeking to work out a solution to the problem of Japanese imports; rather, he saw seeds of future trouble. But he testified that, although he did not rely on it, he credited that statement and announced a wage increase in other mills, effective October 8. This may indicate that his immediate concern over economic prospects had been generally lessened.

While it was an old condition, another adverse factor was cited by the Company as having been aggravated. It thus may be considered as at least partially "new": the resistance by employees to work assignments and general refusal to cooperate with management. We recall the testimony that the Union's election victory was interpreted by

the Company as indicating the growth of this resistance to the point where profitable operation would no longer be possible (as Milliken informed the stockholders on October 17). Milliken testified that whatever hope the Company had had to meet competition "had diminished as a result of the election" because of the Union's campaign promises and statements and because a majority of the employees had voted in favor of the Union. Oeland had through the years referred to a small group or hard core of the employees who had resisted assignment changes; even the signing of a protest petition in 1952 by 95 percent of the employees had not disturbed Milliken to the point of making an inquiry. But formal organization of the employees, reflected in the election results, now brought action.

It is one thing for management to cite a condition which prevents operation; it is quite another to equate the result of a Board-conducted collective bargaining representative election with establishment or evidence of such a condition. The latter conclusion, if permitted to stand as a defense, would create built-in interference with the statutory right to select a collective bargaining representative. We are told in the Company's brief that "(the union's victory was not susceptible to any other interpretation" than that it "meant further efforts to cut the mill's costs would be impeded or halted." To allow an employer to cite an election tally as the cause or proximate cause or even triggering factor for a decision to suspend operations would be to undercut the statutory election machinery. In the instant case we have no evidence of employee resistance after September 6 greater than existed before the Company took steps to liquidate its assets. The Company could not lawfully point to the election results *per se* as evidence of such resistance or anticipated resistance. It dose not help the Company to say that the election results did not arouse its resentment but caused an impartial review of all of the

factors; and therefore to liken the situation to a tornado or fire as an act of God. Other considerations aside in comparing this with an act of God, the Act forbids such action as was here taken because of the election results; it does not forbid such action in cases of tornado or fire.

As for campaign propaganda and promises of greater pay and improved working conditions, expressed at union meetings, in letters to employees, or elsewhere, the Company may no more rely on these as dictating conidtions which it would have to establish than it is required by law to grant them in response to union requests. Such statements are not to be equated with violence as an unprotected activity; employees' membership in a union and their concerted activities are specifically protected, even encouraged, by the Act. To treat the Union's propaganda as reflecting an inflexible position assumed not only by the Union but also by the employees is to impose a penalty on lawful election tactics. (Some of the Union's letters were the basis for objections to the election, which were overruled.) Just as there is many a slip in the bargaining process between demand and agreement, so may that process not be circumvented by assumption that an agreement must mirror the demands. Whether demands are excessive or unreasonable may be considered at the bargaining table; the granting of demands, in whole or in part, is certainly the subject of such consideration: it is no foregone conclusion, as both unions and employers well know. An employer, by anticipating, not only union demands but even the need to grant such demands, may not close its plant to prevent negotiation. No more is an employer to assume that such charges as that management is rotten to the core, included in a union's propaganda, has permanently poisoned employees' minds so that they will no longer properly perform their functions. The Company did not act when the statements were made, but only after the election, when it construed the tally as proof of such poisoning and consequent recal-

citrance. This is another example of building interference into the election process.

The factors cited were sufficient to support a decision to terminate operations; certainly it cannot be said that such a decision could not reasonably, or even unreasonably but credibly, be based on those factors. It might not have been necessary under the circumstances for Milliken to apply the rowels to his fellow directors and stockholders. Thus we do not ignore the existence and the contributory effect of the various reasons or factors. It may be that, had economic conditions been different, the plant would have been continued in operation despite the election results; we need not speculate on that. But the facts and the evidence concerning them lead to the finding and conclusion that the decision to close the mill was not in fact based on economic factors, and that, but for the Union's election victory, that decision would not then have been made. It is undenied that, when Milliken was told immediately after the stockholders' vote on October 17 that 83 percent of the employees had petitioned to return to work, he replied that he would not run the mill so long as there were 17 percent of the hard core crowd. (He had taken no action when Oeland reported to him over the years that there was a resisting minority, perhaps 20 percent.) This might be found to indicate that, regardless of the other factors cited, the existence of a hard core of union adherents itself prompted the decision to liquidate or barred a reversal of that decision. But it is unnecessary to make such a finding. We have seen that termination due to a mixture of reasons, some lawful and others not, violates the Act.[10] Further, as Milliken testified, the election constituted a factor in calling the meeting of the Board of Directors, and caused a review of all of the factors. It does not appear that the "problem . . . would have compelled attention," certainly not the attention and action

[10]Footnote 6, *supra*.

which it received, but for the Union's election victory. As a matter of law it must be held that, with new and expensive equipment acquired and installed as late as September 1956, such a decision which would not have been made but for the protected organizational activities interferes with such activities; and the consequent discharges are discriminatory within the meaning of the Act.[11]

In addition, if the result of the election prompted a review of all of the factors which bore on the question of continued operation, that review and the decision to close the plant, so connected with the election and even if not discriminatory (as with respect to employees not in the unit), would constitute interference within the meaning of the Act since it would tend to discourage freedom of choice at elections. The remedy for such interference can be similar to that where discrimination is found.[12]

To show a predisposing tendency or animus on the part of the Company, counsel for the Union elicited testimony concerning company reference to the alleged ideology or sympathies of union leaders. Counsel for the Company offered to prove such ideology, but even if proved it would not be a defense.

Various supervisors' statements concerning closing of the plant, which are found *infra*, reflect the discriminatory motive here found. Although, as we shall see, those statements warrant the findings of interference by the respective supervisors, they are not shown to have reflected any declaration by Milliken. Those statements are therefore not relied on in the instant finding of company motive.

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[11]The Company is quite correct in its statement that the criterion is the situation as it existed in 1956, and not as it exists today. The footnote nevertheless appended to its brief, while indicating that prices have recently slumped to an 8-year low, discloses further that there was a "buying flurry" last autumn, when a high was reached—a condition which at that time would presumably have pointed to continued operation.

[12]*Rome Specialty Co., Inc.*, 84 NLRB 55.

Because of the Company's position on the effects flowing from its right to go out of business, it may be helpful to consider the cases which are cited in its brief and the arguments there made to the extent that they are not elsewhere covered herein, and even with some repetition. On the finding that it was no longer in business, the *New Madrid* case[13] limited the employer's liability; it did not grant absolution. The distinction, it must once again be said, is between finding of violation and declaration of remedy.

The Company thereafter argues that "motivation loses all significance when the employer permanently quits business." But the cases cited in support of that proposition exculpate the employer in each case because it acted from economic considerations. Not only does motivation not lose all significance, but the analysis of each case, as submitted in the Company's brief, specifically stresses motivation.

Since several times herein I indicate recognition of its practical significance, I do not question the statement: "Searching out motives in such a case is futile; the employer has ended his existence as an employer." But again, futility or absence of remedy does not determine the issue of violation. (Actually, we are not entirely without remedy here, even if it be not very effective.)

Other cases cited, in which it was found that the employer "had been considering" moving or closing, or that it was otherwise not motivated by antiunion considerations, differ in those respects from the instant case. Finally, unlike the *Martel Mills* case,[14] the decision here can be based, as has been indicated several times *supra*, on the Company's own explanation of the cause or causes of its action.

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[13] *N. L. R. B.* v. *New Madrid Manufacturing Company*, 215 F. 2d 908 (C. A. 8).

[14] *Martel Mills Corporation* v. *N. L. R. B.*, 114 F. 2d 624 (C. A. 4).

C. The alleged violation of Section 8 (a) (5)

The Board has held[15] that, by layoffs in violation of Section 8 (a) (1) and (3) of the Act, a company "created an atmosphere in which the 'free opportunity for negotiation' (*N. L. R. B.* v. *Jones & Laughlin Stel Corp.*, 301 U. S. 1, 45) contemplated by the Act did not exist," and thus failed to bargain in good faith, in violation of Section 8 (a) (5) although negotiations were being maintained. *A fortiori* is there a failure to bargain in good faith in the instant case, where the acts in violation of Section 8 (a) (3) were so complete as to discourage and ultimately thwart the Union from pursuing its right to bargain. As it is discriminatory against its employees, so does it constitute a refusal to bargain for an employer, on the basis of a union's campaign propaganda, oral and in writing, concerning improved working conditions and greater pay, to anticipate demands and compulsion to grant such demands, and therefore to terminate its operations and avoid bargaining.

The instant case can be contrasted with the recent *Leeds Shoe Store, Inc.*, a case,[16] where the Board held proper an employer's unilateral reduction of the workweek to conform with that of other employers and "in accordance with (a) predetermined timetable." Whereas the employer there properly questioned the union's majority, the Company here admittedly made its decision after the Union had requested (as we shall see) and *prima facie* proved its right to recognition.

At issue here are also the date since when the Union is to be found to have represented the employees, whether there was a refusal to bargain, and, if so, when. The complaint alleges that on or about September 6, 1956, and there-

[15] *American Brake Shoe Company (Ramapo Ajax Division)*, 116 NLRB 820, 833.

[16] 117 NLRB No. 90.

after, the Union requested the Company to bargain, and sets that date as the date when the Company refused to bargain. The answer, on the other hand, declares that not until October 31 did the Union request the Company to meet with it; that they did meet on November 7, when the Union offered no proposals, and that there have been no further requests to meet. While the complaint alleges that the Union has been the employees' representative since September 6, the date of the election, the answer cites the date when the Board issued its certification, October 24.

Absent other violations from which it infers earlier refusal to bargain, the Board declares a union to have been the collective bargaining representative since the date of its certification. Where interference prevents an election, the request for recognition is noted; in such cases an informal showing of majority may be relied upon and the employer, presumed to have sought in bad faith to have awaited Board certification, is found to have refused to bargain on the date of the request for recognition.

The General Counsel here argues that the refusal to bargain "culminated" when the decision was made to liquidate the plant; he has urged the date of September 7, when Milliken learned of the election result, and certainly no later date than September 12, when the Board of Directors recommended liquidation. The recommendation of its board effectively constituted the decision of the Company, and it was so declared when the stockholders met on October 17. The directors themselves represented a majority of the stock, and the Company's estimate of the effectiveness of their decision may be gauged by the fact that, although objections to the election were filed on September 11, the Company did not produce any witneses in support of its objections in view, as was stated at the hearing, of the recommendation to liquidate. We have seen also that, in

anticipation of the stockholders' adoption of the directors' recommendation of September 12, no new orders were thereafter accepted. Similarly, structural changes which had been begun were immediately halted, and it was decided to use the warp yarn which had been accumulated for the new machines which had been anticipated. On the day of the Board of Directors' meeting, a union representative asked the Company's attorney to arrange a bargaining conference, but was told to wait until after certification by the Board. The violation was pointed and led to the closing of the plant and which was set in motion that day indicates that the Act. The Company's attitude was formally and finally declared on October 17; it had existed and had been indicated on September 12. As in the cases where an election is prevented, we may, in fixing the date when the Union represented the employees, go back to the date when the Union proved (formally in this case) its majority. Clearly it represented a majority on September 6 even if certification was delayed.

I find therefore that since September 6, 1956, the Union has been the collective bargaining representative of all of the employees in the unit; and that since September 12 the Company, in violation of the Act, has refused to bargain with the Union.

As to any bearing on refusal to bargain which might be seen in violations noted *infra* and which occurred prior to September 12, we must first consider the question of waiver of those which occurred prior to the Direction of Election, on August 24.[17] Also, those violations, while attributable to the Company, do not prove bad faith on the part of those who were responsible for indicating the Company's willingness or refusal to bargain. (Only Milliken and Oeland had that status.)

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[17] *Aiello Dairy Farms*, 110 NLRB 1365, 1366-1369; *Alexander Manufacturing Company*, 110 NLRB 1457, 1460.

The Company and the Union did thereafter meet on November 7, at which time the Company submitted information concerning vacations, holidays, the incentive plan, and other fringe benefits. Information concerning wages was refused, the Company declaring that there was no point in furnishing this since an irrevocable decision to liquidate had already been made. Depending on circumstances, a decision to shut down and imminent closing might justify a refusal to submit information and negotiate. As the union representative said at that time concerning any proposal, bargaining would be "pretty empty" in view of the Company's irrevocable decision to liquidate.

But we have seen that the decision to liquidate was in violation of the Act. Being violative, it could not justify a refusal to bargain or, as part of that process, to submit information needed to bargain. As for irrevocability of the decision to close, the same stockholders who had voted to close the plant could reverse their decision. Certainly the Union was entitled to the information, both in order to bargain for a contract and, as representative of the employees, to attempt to persuade the Company not to close the plant. We need not hold that the Company was obliged to submit information for use by the Union in discussions with prospective purchasers of the plant: the refusal to bargain would be found in the Company's refusal to submit the information for use by the Union, whether effective or not, in discussions with the Company itself. It may well be that the Union's last request for information, in a letter dated November 26, when it was quite clear that the plant was going to be sold, was made with an eye to negotiating with prospective purchasers. But whatever the situation at that time, the Company had earlier refused to bargain, as has been found.

D. The alleged independent violation of Section 8 (a) (1)

Although they have not abandoned the allegations of independent violation neither the General Counsel nor the Union has covered this facet in their briefs; the General Counsel did allude to it in his closing argument. The Company's argument and brief have been no more detailed or comprehensive in this connection. Quite in agreement with all counsel, I recognize that, relatively, this is a minor aspect of the case. Out of deference to the mass of evidence received, I shall give it somewhat more attention than have counsel in their concentration on the more important issues.

1. SURVEILLANCE

The Union's meetings were held on Sunday afternoon in an open pavilion in a public park about 2 miles from town. The pavilion is not walled, and anyone walking or driving along the highway nearby could see people under the pavilion roof. Payton, the Union's southern director, testified that the public was invited to the meetings, written invitations were sent out, and some may have been sent to company supervisors. He explained, "We had no secrets." Two supervisors each attended one or more of these meetings, having received invitations in the mail addressed to them. If the letters addressed recipients as "Dear TWUA Member," I would not charge these supervisors, having observed them, for overlooking such limitation. In any event, with respect to the presence of these or other supervisors, the Union's attitude may well have been known to the employees, and the location of the meetings made it clear to them that the Union "had no secrets." We therefore cannot assess against the Company any tendency to interfere with organizational activities if such tendency did adhere to the presence of the supervisors. In this light, a request that an employee

keep a company representative posted on union activities or tell him who attended meetings would not tend to interfere with employees' union activities any more than would surveillance by a supervisor himself.

2. Telling Employees the Plant Would be Closed Because the Union Had Organized It

H. A. Campbell, a spare hand, testified that on October 5 in the office, he broached the subject of the Union and asked Oeland, the general manager, how the situation looked, and that Oeland replied that it looked very dim and that "if the union was out the mill would run and definitely in the mill would close." Oeland more credibly placed the incident on September 21, explained Campbell's presence in the office, and testified that Campbell, exhibiting what he said was a copy of an affidavit requested "by certain people up town to be used in an effort to throw out the election," asked whether such an affidavit "would help the situation any"; and that he replied that he "took a dim view of it being helpful." I find no intereference here.

Immediately after the Board of Directors meeting on September 12, the various supervisors were told to inform their employees of the recommendation to close so that the first news of it would not be via the newspaper on September 13. Goodwin, the Company's production supervisor, thereupon told employee Cook that the Company had made a mistake when they hired him and that he (Goodwin) hoped that Cook would be satisfied when he had all of the unemployed on his conscience. Goodwin explained that he was disturbed and spoke in anger because he too would lose his job. Similarly, early in the morning of September 13 Goodwin asked employee Andrews whether the union badge had done him any good, and told him that he had better start hunting another job. Notice of the recommendation to close might properly be given to the

employees before word of it appeared in the newspaper. But to connect the closing, as Goodwin did, with union activities tends to interfere with such activities, in violation of the Act.

The other supervisors also transmitted the news to their employees. It is unnecessary here to try to determine to what extent, if any, in each case the closing was connected with the election either in the telling or as the employee's own inference although in some cases the violation is clear even if the supervisor was informing the employee, as when Passmore voiced an I-told-you-so to employee Harrelson.

3. Threats

It is also alleged and I find that on or about September 11 Goodwin told employee Johnson that in any recommendation he would have to say that she was a good hand but that, by her own admission, she had voted for the Union. The necessity for the latter information in any recommendation is not apparent; the threat of blacklist in Goodwin's remarks is, and the Act was thereby violated. Employee Harrelson testified also to a threat of blacklist by Passmore, her second hand. Blacklist threats before the election are not alleged although there is testimony concerning such.

It was testified by various employees without contradiction that overseers and second hands, all of them supervisors, had said that the mill would close if a union came into the plant. Such statements are threats in violation of the Act. It is unnecessary to resolve the issue whether any supervisors attributed such a threat to Milliken since, even if they did, we would have no more than a similar offense chargeable to the Company without sufficient proof to charge it against top management generally or Milliken personally. The statements attributed by supervisors to Milliken could be found violative only for their restrain-

ing effect on employees; they could not be considered proof that Milliken had in fact so threatened. Nor need we pursue the issue whether some of these supervisors threatened to discharge employees for union membership or activities. "It is not meet that every nice offense should bear his comment."[18]

Shortly before the election (whether before or after the Direction of Election on August 24 does not appear) the Company posted on bulletin boards throughout the plant a series of 4 posters, 2 of which were received in evidence. One, under the caption, "Which Will You Choose?" depicts a plant in operation and one closed. Underneath the pictures is printed:

> The records prove that TWUA-CIO has caused many textile mills to close, ending jobs and bringing hunger and privation to people who want to work. Where that happens, only the money-hungry union dues collectors benefit—everybody else loses.
>
> DON'T LET THREATS OF VIOLENCE OR FANCY PROMISES DESTROY *YOUR* JOB — VOTE NO!

The other poster is entitled "TWUA-CIO 'BENEFITS' FOR WORKERS," and contains what appear to be copies of almost 20 newspaper reports of violence in connection with various strikes, union strike defeats, and employees' loss of jobs. The words, "Do You Want This?" appear at some half dozen places on the poster. The clippings shown refer to the Union and incidents elsewhere.

These posters do not appear to be a threat of loss which would result from any actions taken by the Company. They

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[18] Julius Caesar, Act IV, Scene 3, Line 7. Cf. *Plumbers, AFL (Frank W. Hake)*, 112 NLRB 1097, 1102: ". . . the extensive violation findings of the Trial Examiner, which we have adopted, and the warrant they provide for the broad remedial order we shall issue herein, render unnecessary and decision with respect to the foregoing incidents, which the Trial Examiner either passed upon or failed to pass upon . . ."

appear, rather to be expressions of "opinion, based on experience, that the employees would lose . . . benefits because (the Union) would not faithfully represent their interests."[19] (The reasonable effect or tendency of these posters is not to be judged in the light of subsequent events.) I would not find that the overall impression of the posters, weighing any suggestion in the pictures against the reading matter, constitutes a threat, or that they tend to interfere with concerted activities, in violation of the Act.

4. Support of a Disavowal Petition

Employee King testified that when another employee brought her a petition which was being circulated for disavowal of the Union, her second hand, Kinsey, came up and told her that two other employees were "100% for it." Kinsey offered no explanation, and it seems that he appeared on the scene to encourage her to sign the petition. This was unlawful interference. Kinsey also asked employees M. B. Gainey and G. E. Truett to get employees to sign the petition to help keep the mill open.

King testified also that she had asked her overseer, Shirley, "what kind of a paper was it that was going around." She later testified that she "thought he would give (her) advice on what (she) wanted to know." She did not ask whether she should sign the paper. Shirley told her that he did not know what kind of a paper it was, but he wanted her to sign it. That she had not asked for "advice" on signing is clear from her determined reply that she would not sign it. Thereafter, Shirley one day said to her, "Well, I see you didn't sign the petition like I asked you and you are going to suffer." Shirley testified in this connection only that King asked whether, if he were she, he would sign the petition; and that he replied that he did not see where it would help her, and "I have never seen it and

[19] *Nash-Finch Company*, 117 NLRB No. 116.

I don't know what it is but I don't think it would hurt you any if you did." I find that Shirley did ask King to sign the petition. While it does not appear to have instigated the petition, the Company in these and a few other instances (not all have been alleged) unlawfully encouraged employees to disavow the Union as their collective bargaining representative after it had won the election.

5. Interrogation

A few weeks before the election, H. W. Campbell, an overseer, asked employee Whitley how she felt about the Union. Employee Grant testified that in May Campbell asked her whether she had attended a union meeting the day before and had signed a union card. Campbell testified that he wanted to see how Grant stood, and that he asked whether she was for or against the Union. Overseer Shirley admitted questioning various employees concerning the Union and their stand.

There is no need to list all of the instances of questioning of employees by supervisors concerning the Union and their activities and attitude toward it. Interrogation of employees was not isolated, even if we exclude questions concerning union meetings for the reasons noted *supra*, and in context of the violations found, it constitutes interference within the meaning of the Act.

III. The effect of the unfair labor practices upon commerce

The activities of the Company set forth in Section II, above, occurring in connection with the operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. The remedy

Having found that the Company has engaged in and is engaging in certain unfair labor practices affecting commerce, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

Cease and desist recommendations and conditional recommendation for affirmative action will be made although I would not undertake to refute the argument that in the existing circumstances they are futile. If this adds up to no effective remedy, no acceptable alternative has been indicated or appears to be warranted. Some may irreverently say that we have been flagging a dead horse. Others, quoting the bard, that we have an "airy nothing." Except for the publication of a notice, recommendations for affirmative action will be made dependent on resumption of operations.

It has been found that the Company refused to bargain collectively with the Union thereby interfering with, restraining, and coercing its employees. I shall therefore recommend that the Company cease and desist therefrom and also, upon request in the event that the Company resumes operations, bargain collectively with the Union with respect to wages, hours, and other terms and conditions of employment, and embody in a signed contract any understanding reached.

It has been further found that the Company, by ascription of the closing of the plant to union activities, threats, support of a disavowal petition, and interrogation, interfered with, restrained and coerced its employees in violation of Section 8 (a) (1) of the Act. I shall therefore further recommend that the Company cease and desist therefrom.

It has been further found that the Company, by closing the plant and discharging its employees, discriminated against them in respect to their hire and tenure of employment in violation of Section 8 (a) (3) of the Act. (As to

those not in the unit, Section 8 (a) (1) was violated.) The record shows that, on or about October 15, as his work fell off (with the extra warp yarn on hand, some operations ran at less than capacity between September 12 and October 17), employee Andrews quit his job to seek fulltime employment. While we cannot say how much more work he would have had but for the discrimination, the decision to accept no more orders and to shut down the mill led to the drop in work and thus to his quitting. Employee Kelly, who quit on October 15 to take another job, appears also to have been constructively discharged. That question with respect to any of the employees can be determined on compliance should it develop further. There is no evidence of wholly voluntary quittings or of discharges for cause after September 12. I shall therefore recommend that, in the event that the Company resumes operations, it offer immediate reinstatement to their former or substantially equivalent positions,[20] to all employees who were on the payroll on September 12, without prejudice to their seniority and other rights and privileges. Positions when available shall be distributed among employees on a preferential basis according to such system of seniority or on such other nondiscriminatory basis as heretofore has been applied in the conduct of the Company's business. Because of the unusual circumstances, I shall further recommend that the Board reserve the right to modify the reinstatement provision of its Order.

It might appear to be almost sadistic, not against the Company but against the Union and the General Counsel, to direct that the Company post notices by advertisements in local newspapers. But the Union has so requested and, if such advertisements will lessen the effect, on employees and potential employees, of the interference, discrimination, and refusal to bargain, they may serve a worthwhile pur-

[20] *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

pose and effectuate the policies of the Act. In this small community, the employees can be expected to acquire full knowledge of the advertisements. With the plant closed, there is no reason, except punitive, to direct mailing of notices to the employees.

The unfair labor practices found herein indicate a purpose to limit the lawful concerted activities of the Company's employees. Such purpose is related to other unfair labor practices, and I find that the danger of their commission is reasonably to be apprehended. I shall therefore recommend a broad cease and desist order, prohibiting infringement in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. Textile Workers Union of America, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All of the Company's production and maintenance employees at its Darlington plant, including firemen, slasher foremen and supply room clerks, but excluding office clerical employees, professional employees, watchmen, guards, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Textile Workers Union of America, AFL-CIO, was on September 6, 1956, and at all times since has been the exclusive representative within the meaning of Section 9 (a) of the Act, of all employees in the aforesaid unit for the purposes of collective bargaining.

4. By refusing to bargain collectively with Textile Workers Union of America, AFL-CIO, as the exclusive

bargaining representative of the employees in the appropriate unit, Darlington Manufacturing Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By discriminating in regard to the hire and tenure of employment of its employees, thereby discouraging membership in a labor organization, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

6. By such refusal to bargain and discrimination and by ascribing the closing of the plant to union activities, threatening a blacklist and closing of the plant if the Union came in, supporting a disavowal petition, and interrogating employees concerning union membership and activities, thereby interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Company has engaged and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

7. The aforesaid labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondent Company, Darlington Manufacturing Company, Darlington, South Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, AFL-CIO, as the exclu-

sive representative of all employees in the appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment;

(b) Discouraging membership in Textile Workers Union of America, AFL-CIO, or in any other labor organization of its employees by closing its plant and discharging its employees or discriminating in any other manner in respect to their hire and tenure of employment, or any term or condition of employment;

(c) Ascribing the closing of its plant to union activities, threatening a blacklist and closing of the plant if the Union came in, supporting a disavowal petition, and interrogating employees concerning union membership and activities; and

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a)(1) of the Act.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Upon request in the event that the Company resumes operations, bargain collectively with Textile Workers Union of America, AFL-CIO, as the exclusive representative ofthe employees in the appropriate

unit, and embody in a signed agreement any understanding reached;

(b) In the event that the Company resumes operations, offer to all employees who were on its payroll on September 12, 1956, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, in the manner set forth in the section entitled "The remedy," above;

(c) Advertise once a week for 8 weeks in the News and Press, Darlington, South Carolina, and the Florence Morning News, Florence, South Carolina, a copy of the notice attached hereto and marked Appendix; and

(d) Notify the Regional Director for the Eleventh Region, in writing, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, what steps have been taken to comply herewith.

It is further recommended that the Board reserve to itself the right to modify the reinstatement provision of its Order.

It is further recommended that unless the Company shall within twenty (20) days from the receipt of this Intermediate Report and Recommended Order notify said Regional Director, in writing, that it will comply with the foregoing recommendations, the Board issue an order requiring said Company to take the action aforesaid.

Dated at Washington, D. C., this 30th day of April 1957.

LLOYD BUCHANAN
Lloyd Buchanan
Trial Examiner

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL bargain upon request, in the event that we resume operations, with TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, as the exclusive representatives of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and embody in a signed agreement any understanding reached. The bargaining unit is:

> All production and maintenance employees at our Darlington plant, including firemen, slasher foremen and supply room clerks, but excluding office clerical employees, professional employees, watchmen, guards, and all supervisors as defined in the Act.

WE WILL NOT discourage membership in TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other organization of our employees by closing our plant and discharging our employees or discriminating in any other manner in respect to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT ascribe the closing of the plant to union activities, threaten to blacklist employees or to close the plant if the Union comes in, support petitions disavowing TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or interrogate employees concerning union membership or activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

WE WILL, in the event that we resume operations, offer to all employees who were on our payroll on September 12, 1956, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges.

All of our employees are free to become, remain, or to refrain from becoming or remaining members in good standing in TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8(a) (3) of the Act.

DARLINGTON MANUFACTURING COMPANY
(Employer)

Dated ....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

UNITED STATES OF AMERICA

BEFORE THE
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

ROGER MILLIKEN and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO	Case No. 11-CA-1071

Mr. John M. Dyer, for the General Counsel.

Messrs. Townley, Updike, Carter & Rodgers, of New York, N. Y., by *Mr. Stuart N. Updike* and *Mr. Lee W. Meyer*, for the Respondent.

Mr. Nate Janes and *Miss Patricia Eames*, of New York, N. Y., for the Union.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

BUCHANAN, Trial Examiner: Issuance of an Intermediate Report at this time itself calls for an explanation concerning procedure in these proceedings, which have been beset by procedural complications. How this question arises we shall now see as we briefly review the history of the various proceedings to date, all under the same charge and amended charge; the basis for answering this question will be shown *infra*.

On September 6, 1956, the Union won a Board-conducted election at Darlington Manufacturing Company. On October 17, the stockholders voted to dissolve the corporation; operations were at once discontinued except that the

stock in process was run out, and the employees were successively dismissed as their work ran out; all operations were terminated on November 24, and on December 12 and 13, 1956, mill and equipment were sold at public auction.

The Union had filed, on October 16, a charge which alleged violation by Darlington of Section 8 (a) (1) of the National Labor Relations Act, as amended, 61 Stat. 136. An amended charge, which alleged violation of Section 8 (a) (1), (3), and (5), was filed on November 1 against "Darlington Manufacturing Company, Roger Milliken, President and Deering-Milliken & Company, Inc." On December 4 a complaint was issued against Darlington alone. The issues raised by that complaint were heard in January and February 1957, and an Intermediate Report issued on April 30.

After oral argument on exceptions to the Intermediate Report, the Board on December 16, 1957, called for a hearing on the single employer status of Darlington and Deering, Milliken and other corporations. That hearing, report on which had to be held in abeyance with the issuance of the instant complaint (the third in the series) and a motion to consolidate, was based on the remand order and on a complaint (the second in these proceedings) against "Darlington Manufacturing Company," "Roger Milliken," and "Deering-Milliken and Company, Inc."; as noted *infra*, the second complaint has been dismissed as to Roger Milliken.

The Board having denied the motion to consolidate the second and third complaints, there came on for argument before me at New York, New York, on April 9, 1959, a motion to dismiss the latter. Briefs had previously been filed, and counsel were heard in detailed argument which, as we shall see, was not limited, as on a motion to dismiss, to the third complaint: this Intermediate Report is based also on the statements concerning the proposed proof to be offered at the hearing, on an affidavit submitted by the Union

with its brief, and on an agreement among counsel at the argument to the extent that the answer admits the allegation of the instant complaint concerning ownership of Darlington stock. All of the latter are factual items which supplement the complaint.

More inclusively, the determination or findings herein are made on the basis of the entire record in these proceedings to date, including the charges filed in 1956, the testimony concerning Roger Milliken's acts as previously found, the statement of what would be shown at a further hearing, the duties and authority of Darlington's officers, and the affidavit received to explain the Union's intent when the amended charge was filed. It becomes unnecessary, in view of the various and sufficient bases for the determination herein, to consider such controverted items as the extent of Rogers Milliken's control, as distinguished from ownership of Darlington stock. It appears that, conversely, were the General Counsel's position here sufficient as a matter of law, the facts previously found and those here noted would warrant an Intermediate Report and the conclusion that Roger Milliken is liable individually even without decision on such issues as the extent of his control of Darlington stock. In short, the General Counsel, who as we shall see is relying on the evidence previously adduced as support for the instant complaint, would here prevail were that evidence sufficient for findings against Roger Milliken individually; he cannot where it is not. The arguments of counsel, as pointed out at the time and as counsel, and this Intermediate Report search the record of this entire case to date, the earlier proceedings being part thereof and relied on herein; and further testimony is unnecessary.

Having indicated the scope of the instant proceeding and the extent of the matters relied on for the decision and recommendation in this Report, we come to analysis of the bases for a decision. We have already noted that the

amended charge of November 1, 1956, upon which the instant complaint against Roger Milliken is based, refers to "Darlington Manufacturing Company, Roger Milliken, President and Deering-Milliken & Company, Inc." As early as the begining of the first hearing, in stating my reasons for granting a motion to revoke subpoenas, I stated that "the amended charge in these proceedings was filed not only against Darlington Manufacturing Company and Roger Milliken as President," but also against Deering, Milliken. That interpretation, i. e., that the reference to Roger Milliken, President meant Roger Milliken *as* President, appeared to me to be natural, legal, and correct; it still so appears.

On those subpoenas, reference by the Union was to Roger Milliken individually, as President of Darlington, and as President and Treasurer of Deering, Milliken; similarly on the contemporaneous application to take depositions and for the issuance of subpoenas. The Union's recognition of the significance of the phrase "Roger Milliken, President" was further indicated by the reference to "Roger Milliken, President of the Respondent" in its brief to the Trial Examiner after the first hearing, filed within 6 months of the October 1956 events.

To the present argument that the word "President" in the amended charge does not indicate that the charge is against him in his capacity as president but merely "serves to identify who Roger Milliken is," the short answer is that "A. B., President" is construed as a reference to or identification of A. B. in his capacity as officer, not to A. B. individually. With full understanding that Davis, the Union's International Representative who filed the charges, is not a lawyer, the fact remains that they were not filed against Roger Milliken. Davis' affidavit of intent cannot overcome the legal effect of the language which he used and the limitation thereby created; this aside from the argument by counsel for the Respondent against that affidavit's relia-

bility, which at this point I do not question. If the charge and the 6-month statutory limitation are intended to put respondents on notice, the charges here did not give such notice to Roger Milliken individually. Whatever the intent and however innocent the error, the burden is not to be transferred to one who is innocent of that error. Further, ample opportunity existed to amend the charge again: 3 months or less after the original and amended charges were filed, and well within the statutory period, I referred, as noted *supra*, to the amended charge as having been filed against "Roger Milliken as President." If that interpretation was not the General Counsel's and the Union's, and if it did not reflect the Union's intent, there was neither protest from them nor amendment of the charge.

The Respondent points out that in *Republican Publishing Company*,[1] cited by the Union, the Board dismissed the complaint against "Bowles as Trustee" because the charge named "Bowles." The Union answers that the dismissal there was based on the failure of the complaint to name Bowles as Trustee, while the instant complaint does name Milliken individually. To this the reply is that, if omission of a name or proper designation from a complaint warrants dismissal, then omission from the charge is as important for its failure to serve the purpose of giving notice. This is not a case of a technically erroneous listing which, in the absence of other reasonable construction, can be held to have given notice to a person other than the one designated. It is understandable and not at all uncommon, from charge through final decision, to cite a corporation and a named officer *qua* officer. A frequently taken and recognized step is not to be construed as something else merely because it is unnecessary. With respect to the findings made and remedy directed against Bowles, who "actually conducted" the business, the *Republican Publishing* case is included in the footnote reference *infra* to cases involving or related to the prin-

[1] 73 NLRB 1085.

ciple of piercing the corporate veil. (Nor does the instant case involve the question of a charge, sufficient to support a complaint, reinstated after it had been dismissed because of a clerical error.)

From the filing of the charges, through the protests and objections, to limitation of the original complaint to Darlington, and thereafter, the attempt has consistently been made to show an interrelationship to the point of liability among the various corporations; Milliken has been referred to in his capacity as officer of Darlington and other corporations, not individually; and the intent thus disclosed and the factual finding here of such intent are in harmony with the ruling that as a matter of law Roger Milliken individually was not named in the charges. The distinction and difference noted are carried out in the instant complaint, which is not brought against "Roger Milliken, President." If it be argued that the latter would defeat the purpose of this proceeding, that would be but recognition of the variance between the amended charge and the complaint.

This ground for dismissal was included as one of the reasons for my dismissal as against Roger Milliken of the second complaint in October 1958. While it became unnecessary to pass on it at that time since the Board in its ruling of October 22, 1958, relied upon and cited as "the sole ground" the first reason which I had stated, the very question has here been presented. Similarly, while decision on this ground makes it unnecessary to consider other bases for dismissal, statement of such other bases may serve to avoid future reference, argument, or hearing.

We shall soon turn to consideration of the evidence of violations heretofore adduced and indicated for further hearing. We can here note that such evidence, characteristic of proof of corporate violation but not of individual liability, indicates that the charge, found to have been filed against Milliken as President, was properly so filed: it may be small consolation, but the evidence warrants the charge as

filed against him in his corporate capacity, not as an individual.

Before leaving this point, it should be noted that there is no suggestion that Milliken sought refuge behind a corporate entity and organized, maintained, or dissolved Darlington to avoid an obligation to comply, as successor or otherwise, with the Act or a Board order, to enable him to violate the Act without penalty, or to evade the Board's jurisdiction. Mere organization of a corporation for the purpose of limiting financial liability, saving on taxes, or other common corporate purpose does not make the owner of some or even most of the corporation's stock, with the extent of control of stock here suggested, personally liable for the corporation's violations. The Board has pierced the corporate veil in cases of sale or dissolution and organization of a successor, where a scheme to evade has been shown. But there is no warrant for piercing the corporate veil here to impose liability on Milliken individually under the allegations of the complaint as amended. Unlawful intent in organizing the corporation has not been shown; and the findings of violation heretofore made were, as noted *infra*, based on acts chargeable to Darlington and Milliken, not individually but as its officer. His activity in connection with the violations found, detailed by the Union, do not call for a proceeding or remedy against him individually under the Act and decisions thereunder or under the principles of corporate law. The cases cited by the Union are distinguishable by the tests noted above. None of them involved a complete cessation of business and permanent liquidation, as here.

In the *Cookeville Shirt Company* case,[2] cited by the Union and the Respondent, the complaint named French, an officer of the respondent company as a respondent in his individual capacity, and the remedial order was directed against him because of "the prominent role" played by him

[2] 79 NLRB 667, 671.

in the violations.[3] But the Board there specifically refused to issue a blanket order against French in connection with other plants of which he was an officer, and the order against him did not cover any 8(a)(3) remedy, there being none in that case. Aside from the point, noted *infra*, that the corporation is not a party here, we shall soon see that there would be no practical difference here so far as remedy is concerned were an order to run against Milliken in connection with the Darlington violations. We are not at the moment considering cases involving individuals who, as respondents, are individually liable for reinstatement and back pay because they sought to evade obligations, and who can be reached by piercing the corporate veil. Nor, in the light of the ruling concerning remedy in the Intermediate Report in the Darlington proceeding, is there basis for further remedy here. At most (this is a concession which may only lead to further argument), considering *Cookeville Shirt*, and if greater personal involvement by Milliken than has been shown were found, we could here direct a remedy against him limited to Darlington's operations with respect to the 8(a)(1) and (5) violations, and excluding the 8(a)(3) aspect with respect to reinstatement and back pay, as in *Jackson Daily News*,[4] and *Sanco Piece Dye Works, Inc.*[5] but as an additional remedy this would be quite meaningless and could not justify the taking of testimony for the third time in this proceeding. It is unnecessary to explain and further distinguish each of the other cases cited by counsel; all have been examined and considered.

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[3] Conceding that Darlington acted through its president, directors, and stockholders in violating Section 8(a)(3) and (5), I cannot see how it could have committed those violations with less involvement of Roger Milliken. As for the 8(a)(1) violations, we shall note that they were not chargeable to Milliken individually and that they are not even now alleged against him.

[4] 90 NLRB 565.

[5] 38 NLRB 690. Cf. also *Consumers Lumber and Veneer Company*, 63 NLRB 17. In *H. McLachlan & Company, Incorporated*, 45 NLRB 1113, the remedy ran against an individual who, as stipulated, was "a person acting in the interest of" the corporate employers. Similarly in *National Lumber Mills, Inc.*, 37 NLRB 700, the remedy

As before, the request to bargain is here alleged to have been directed to Darlington, not to Milliken personally. No more than he was asked to bargain did the latter in his individual capacity refuse. Nor is there evidence of any other personal violation by him. For example, it is not claimed that he prompted the 8(a)(1) violations found. Darlington is liable for its supervisors' acts under the doctrine of *respondeat superior*. That doctrine does not impose liability on Milliken any more than it does on Darlington's chief active or operating executive, who under the bylaws as previously shown is its treasurer, Oeland.

True, the original hearing was held on the issues of violations by Darlington. But we know from the General Counsel that, beyond the acts or statements brought out in that hearing, evidence might conceivably be offered of "only one or two things" not already in the record; there would be very few additional matters, like Roger Milliken's speeches. Those speeches were cited at the first hearing to show Darlington's violations, and their rejection was not based on the fact that Milliken was not a party. They were rejected because they were collateral to the issues and would have opened the door to a mass of collateral testimony as pointed out at that hearing and in the Intermediate Report thereafter issued. The testimony concerning those speeches would not have proved further violation of Section 8(a)(1) beyond those alleged and found; nor would they prove that the violations alleged in the complaint now before us were chargeable to Roger Milliken individually. Neither would a few acts or statements like Milliken's speeches have constituted violations of Section 8(a)(3) and (5) or add to the violation of those subsections already found. Further, such additional acts or statements are not even included among the detailed allegations of violation of Section 8(a)(1)

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was imposed against an individual who controlled a closed corporation. The 8(a)(3) remedy has been included in other cases, which embraced the element of piercing the corporate veil.

which are set forth in the instant complaint against Roger Milliken. If it be urged that the acts and statements would indicate such an attitude or animus by Milliken as would support findings of violation of Section 8(a)(3) and (5), the answer is that his attitude has already and clearly been noted in connection with the finding of company motive in terminating operations.

Counsel for the Union did declare his inability at the time of the argument herein to state what would be shown. But we must bear in mind that this complaint was issued more than 3 months ago and that an early hearing has been anticipated; and, more significant, that 2½ years have elapsed since the filing of the charge which allegedly cited Milliken individually and presumably was and is based on activities by or chargeable to him. Under these circumstances there can be no justification for an additional hearing when, after the General Counsel has indicated that the proof would in general consist of that at the first hearing (it would be shown that Milliken committed the unfair labor practices by and with Darlington and Deering, Milliken), the Union states only that proof will be submitted at the hearing to support any allegations which the General Counsel has not substantiated.

We do have clarification in the General Counsel's arguments that Milliken and the other directors are not "compartmentalized": they act as individuals as well as in their capacity as corporate representatives. But this argument, resting on the reference to evidence already received, does not call for further hearing; the evidence can be considered as received here, and its sufficiency determined as a matter of law. Such procedure follows the line called for by the Union itself for stipulations to avoid repetition of testimony.

The General Counsel and the Union have acknowledged that Milliken is not guilty of so-called independent violation of Section 8 (a) (1) (we have just noted that there is no such allegation); this in spite of a statement which he made

to a public official concerning a "hard core" of union supporters, which statement was again cited by the General Counsel at the instant argument. Thus counsel for the proponents even now correctly treat this statement by Milliken as one chargeable to Darlington (it was so regarded in the Intermediate Report), not to Milliken individually. In identical manner, the violations of Section 8 (a) (3) and (5) depend on Milliken's acts as representative of the corporation, not in an individual capacity. Since there is no indication that new or different evidence would now be offered, we can evaluate such evidence at this time as offered against Milliken individually, and rule on it as on a motion to dismiss at the close of the General Counsel's case. (We have thus gone beyond a motion for summary judgment, which the Union recognizes.)

The limitation to Milliken as officer, both in the proof received and in the proposed proof further warrants dismissal of this complaint. As officer of Darlington, he is and will be included in any remedial provisions directed against that corporation. As for other corporations, should they be brought within the ambit of liability, the remedy there proposed or directed will similarly include corporate officers. We thus already have complete coverage of Milliken as officer to the extent that the charge refers to him as such; and, as just shown, no personal liability on his part even were the charge construed as referring to him personally.

Nor does the presence of Milliken individually solve any problem of remedy. Certainly if Darlington is not to be directed to go back into business, Milliken cannot be directed to enter the business and personally employ the discriminatees. With respect to back pay, were any to be directed, the remedy runs against Darlington, its officers, agents, successors, and assigns. In the latter connection we can compare a recent decision in which the Board declared the business agent "was acting for the Union and within his au-

thority when he engaged in the various actions that the Trial Examiner found violated the Act . . . Accordingly we find that (the business agent), as agent for the Union, has similarly violated" the Act. The Board's order was there directed against the Respondent Union, "its representatives, officers, successors, assigns, and agents, including the Respondent Business Representative"; and the notice to be posted called for the signature of "(the named agent), Business Representative."[6] Surely another hearing is not warranted to obtain an order against Milliken as officer or agent of Darlington instead of against Darlington, its officers, agents, successors, and assigns. Neither am I aware of any request, to the Trial Examiner or to the Board in the Darlington portion of this proceeding, that the remedial order cite Milliken as an officer or agent.

On behalf of Roger Milliken it is here further argued that, when it was pointed out at the beginning of the lengthy hearing in 1958 that Roger Milliken was not properly before us as a respondent, the General Counsel could and should at that time have sought enlargement of the scope of the Board's remand order to include him if a complaint was not previously issued against him individually; and that the Board and the General Counsel "are estopped, or would be abusing their discretion in not considering themselves estopped, presently to prosecute or entertain this or any other proceeding against Roger Milliken which purports to be based upon the same amended charge. . . ."

The law is well settled that there is no estoppel here. While that principle was emphasized by the Respondent at the argument, there remains the plea of abuse of discretion, which I must leave for action by the Board in the first instance should it be deemed necessary to consider this point.

The further point is urged by the Respondent that, while the complaint alleges that both Darlington and Deering,

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[6] *Local 49, Sheet Metal Workers (New Mexico Sheet Metal Contractors Association, Inc.)*, 122 NLRB No. 145.

Milliken are engaged in commerce, Roger Milliken, the sole respondent herein, is not himself so engaged, nor is it alleged that he is; and that the Board lacks jurisdiction herein since there is no respondent who is alleged to be engaged in commerce within the meaning of the Act. (Here is perhaps a practical and immediate result of the procedural involvements and complications, of which the motion to consolidate and the order thereon are the most recent prior to the problems here raised.) In support of its position, the Respondent cites the Fifth Circuit's decision in the *National Paper Company* case.[1] Having gone so far in stating other grounds for dismissal of the complaint, I believe that we can safely say at this point that it is unnecessary to pass upon this last.

Contrary to the contention of the Respondent herein, I find that Roger Milliken was an agent, using the term in its generic sense, of Darlington in his capacity as officer and director. But this is no more than saying that Darlington was liable for his acts, as previously found, and that any remedial order against it runs against him in his corporate capacity.

The attempt, legal and proper, has been made in the motion, at the argument (which, as noted *supra*, was extended by all counsel beyond the scope of the motion), and in this Intermediate Report, to avoid protraction of this litigation. It is not for me to serve or indulge the predilections of counsel or to impose any personal notions of my own on the issues before us. Thus we are not to consider the arguments of counsel addressed to the welfare of individuals or groups, or to be swayed thereby in passing upon the issues. This is a legal proceeding, and we are to proceed to decision according to the law in statute and cases.

With respect to the question of remedy, which has proved disturbing and been made the subject of exceptions

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[1] *N. L. R. B.* v. *National Paper Company*, 216 F. 2d 859, at 868, revg. 102 NLRB 1569.

and pleas (which I respect) for justice and the general welfare, it is not our function in this proceeding to amend the Act. But it may prove of some comfort to those who stand aghast at the idea of a violation without an apparent remedy, to point out that the situation in this case is self-limiting and does not indicate that the Act can be violated with impunity. We have seen that Darlington went out of business; the evidence submitted does not show that it has been continued under a different name to permit violators to escape a remedial order while reaping the benefits of the business. Whatever the factors which the Darlington stockholders weighed, corporations will not generally go out of business and liquidate their holdings to avoid dealing with a union. Where such steps are taken, financial loss will normally result and there will certainly follow the loss of profits and of that hope for future profits which motivated the enterprise. (If one thinks of motivation other than hope for profit, satisfaction of that motivation, whaever it be, will be denied as the business is liquidated.) If this does not line the pockets of those discriminated against, no more are they compensated when an employer is unable to pay; and it is not our broad social function to provide compensation and a remedy beyond the provisions of the Act. The fact remains that the situation here will hardly become common.

On the basis of the findings of fact and upon the entire record in the case to date, I conclude that no charge has been filed against Roger Milliken, and that he has not individually, as distinguished from his capacity as officer and director of Darlington, engaged is unfair labor practices within the meaning of Section 8 (a)(1), (3), or (5) of the Act. It is unnecessary to repeat here the earlier conclusion of law that the Union is a labor organization within the meaning of Section 2 (5) of the Act, or, for the reasons set forth *supra,* to find or conclude whether Roger Milli-

ken, the sole respondent cited in this complaint, was engaged in interstate commerce within the meaning of Section 2 (5) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that this complaint be dismissed in its entirety.

Dated at Washington, D. C., this 30th day of April 1959.

LLOYD BUCHANAN
Lloyd Buchanan
Trial Examiner

Intermediate Report (1959)

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

DARLINGTON MANUFACTURING COMPANY ROGER MILLIKEN DEERING, MILLIKEN & Co., INC. and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO	Case No. 11-CA-1071

Mr. John M. Dyer, for the General Counsel.

Messrs. Townley, Updike, Carter & Rodgers, of New York, N. Y., by *Mr. Stuart N. Updike* and *Mr. John R. Schoemer, Jr.*, for Deering, Milliken & Co., Inc., and Roger Milliken.

Messrs. Price & Poag, of Greenville, S. C., by *Mr. D. Poag* and *Mr. John R. Schoemer, Jr.*, for Darlington Manufacturing Company.

Mr. Benjamin Wyle, of New York, N. Y., by *Mr. Nate James*, for the Union.

SUPPLEMENTAL INTERMEDIATE REPORT AND RECOMMENDED ORDER

BUCHANAN, Trial Examiner: This is a report after three rounds of what if, not for any championship, may yet

be regarded as a historic fight. As referee with the additional duty to explain my decision, mine is not to reason the why of all this. But one can wonder whether more progress toward a determination of the problems here would not have been made, once the complaint was issued in the form determined by the General Counsel in 1956, had the issues presented in the original hearing and covered in the first Intermediate Report herein, that of April 30, 1957, been passed upon as urged exactly 2 years ago.

These thoughts intrude on our present consideration since however strictly we apply ourselves to the items of fact, which are myriad, and the issues of law, which are novel and difficult, we realize that there has for a long time persisted a very real and practical situation which, if not clamoring for decision, has certainly warranted one: on the one hand more than 500 employees no longer employed and clearly not bargained for; on the other, pendent charges of violation of the law and hundreds of thousands of dollars tied up with the threat of liability running into millions as time elapses. The delay is under-scored by the provisions for priority handling in the new Section 10(m) of the Act, effective November 13, 1959.

Nor have these been 3-minute rounds. The extent of the problems first presented was hinted at in the remand order of December 1957. The third hearing, based on an additional complaint, represented an attempt to have ditto marks inserted under the findings and conclusions of the first so that they would apply to the individual respondent. The second hearing, on which we must now report, was an inquiry into the relations among various corporations as indicated by lengthy and detailed oral testimony and examination of almost 400 documents which themselves were, as we were informed, the distillate of many thousands earlier examined. Darlington and other companies have here been viewed paradigmatically in an exhaustive examination of its various activities and their nature.

Extreme effort needs neither apology nor defense. But such effort has been manifest here in the hours of preparation, hearing, and argument. The concept of public service and recognition of the rights of litigants give rise to the hope that the problems here involved will before long be resolved.[1]

We might at this time consider the words of Mr. Justice Holmes: "And it seems to me that at this time we need education in the obvious more than investigation of the obscure."[2] The hearing which this supplemental reports covers has been an education in the obvious: existence of many corporate entities is recognized and the facts concerning their relations largely agreed upon or admitted. But findings and conclusions to be developed from those facts are disputed and, with the claim that the corporate set-ups obscure a single entity status, we are indeed engaged in an investigation of the obscure.

I would normally state at this point that briefs have been filed by the respective parties, the time to do so having been extended. In this instance I want to say that counsel have favored me with well documented briefs, which I regard as I would many an author's autographed work. That the briefs do not cover all of the items cited at one time or another in the hearing as relevant to the issues is quite understandable despite counsel's thoroughness in their briefs as in preparation for and conduct of the hearing.

By a remand order on December 16, 1957,[3] after it had heard oral argument following issuance of the first Intermediate Report, the Board has called for determination

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[1] I realize that whether this Report be concluded with a period or an exclamation point, there will actually be a question mark as it awaits further consideration. Our procedure provides almost built-in, quasi-automatic question marks. In this case they have preceded and indeed prompted this supplemental hearing and report.

[2] Quoted by Max Lerner in "Mind and Faith of Mr. Justice Holmes," page 388.

[3] 119 NLRB 1069.

whether what some have called an integrated operation and others an empire constitutes a single employer so that a remedy for violation by one corporation can be applied against other corporations. Conceivably[4] it might be found under the order that the other corporations or some of them were directly or indirectly involved in and guilty of the violations found. If these statements be an oversimplification, they at least suggest the problem here, which will be more fully described. The Respondents have noted that the offer of proof to which the remand order referred alleged single employer status of the Respondents Darlington and Deering Milliken. While counsel is correct in saying that the offer is important, I must rely on the order itself, which clearly embraces various other mill corporations.

Circumstances do indeed order things as they alter cases. Our problem would be to determine whether the order of things here, the relationships and activities, reflect that measure of ownership and control which warrants a finding of single employer status or whether such order is merely circumstantial and indicative of or compatible with independent status of the various companies and Darlington in particular. With the mass of evidence before us and the detailed preparation by counsel, the allusions are specific; but the probative effect is obscure. Unlike other long cases under the National Labor Relations Act, the need here is not to weigh credibility in resolving many different if relatively uncomplicated questions as where issues of violence, employees' fitness, or employer's motives are involved; but to measure admitted activities on a scale which will ultimately indicate voluntary cooperation and independent status, or control and single employer status.

Yet, whatever the scope of the remand order, the hearing was largely confined to the proof of the relation be-

[4]Counsel indicated disagreement on this point, which need not now be decided.

tween Darlington on the one hand and Deering Milliken and the related Deering Milliken Service Corporation (now known as Palmetto Service Corporation) and Deering Milliken Research Corporation, hereinafter DMSC and DMRC respectively, on the other. At the General Counsel's request, the hearing was kept open for 3 weeks so that he might consider the advisability of "further investigation of the relations of the other companies; along with or parallel to what (he had) attempted to do here in regard to Darlington," and of a request to the Board for clarification of the scope of the remand order. (No request for extension of the hearing was made, and by prior arrangement, it was closed on November 13, 1958.)

Whether there ultimately proved to be a substantial or a tenuous connection between the offer of proof originally made and what was in fact presented at this hearing, one would expect that, the offer having been made, the proof would soon thereafter be forthcoming. Yet many months elapsed between the remand order which cited the offer and the hearing. It is not a sufficient reply that the months were spent in accumulating evidence.[5] For this would merely underscore the extent to which the hearing under the remand order exceeded the scope of what was originally available to be offered. The thread of continuity may have disappeared. But never has a mill worked on so long a yarn.

But the hearing was based on more than the remand order. For on February 3, 1958, the Regional Director for the Eleventh Region issued an amended complaint against the three Respondents named herein. Thereafter a hearing under the remand order and on the amended complaint was held before me from September 30 to Oc-

[5]The term "evidence" will be employed herein to refer to testimony received at the supplemental hearing. Although not material to the issues raised by the pleadings and tried at the original hearing, such testimony is relevant under the terms of the remand order.

tober 10, 1958, at Charleston, South Carolina, and from October 15 to 23, 1958, in Charlotte, North Carolina, all dates inclusive. Whether the hearing directed by the Board could properly be so extended by the Regional Director by issuance of an amended complaint with new allegations without leave from the Board[6] was not at that time tested: for reasons which need not now be considered,[7] no objection was raised to this procedure of bringing in additional respondents in the remand hearing; its acceptance was specifically declared by counsel. The amended complaint was thus received subject to Board approval; such approval, only to the extent that a corporate party was added, was implied when, as we shall now note, the complaint was on motion dismissed as to the individual respondent.

This motion to dismiss as to Roger Milliken was granted for several reasons which I stated on the record. Upon appeal, the Board affirmed my ruling "upon the sole ground (the first which I had stated) that the amendment to the complaint to the extent that it included Roger Milliken as an individual respondent went beyond the permissible (sic) scope of the Board's remand order of December 16, 1957." This left the two named corporations as sole respondents.

With the issuance of a new complaint against Roger Milliken (same case number) on December 31, 1958, and a motion to consolidate that complaint with the one herein, I suspended work on this Intermediate Report pending Board decision on that motion. The motion was denied[8] on March

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[6]The virtue of such procedure remains undiscovered. It could introduce many new problems and seriously delay action which the Board had itself postponed for a limited purpose.

[7]I pointed out early that, if single employer status were shown, the determination herein would include all who are embraced within such status. Counsel for the Respondent appeared to agree at one time.

[8]In its order the Board recited: "Upon exceptions to the Intermediate Report, the Board remanded this case in 1957 for further hearing." The suggestion of causal connection between the exceptions and the remand was surely unintentional: we shall note *infra* the terms of and the basis for the remand.

11, 1959, and I further deferred action herein until after I had issued reports in 10 other cases, 9 of them heard after the instant hearing. On April 30, 1959, (2 years to the day after issuance of the first Intermediate Report), I recommended dismissal of the complaint against Robert Milliken.

The violations and the proceedings to date can thus be summarized. But the answer to the question of single employer status depends on the facts adduced at the remand hearing, and these cannot be readily summarized. The General Counsel and the Union do not rely on a certain few elements alone to prove their contention: They urge the whole record, several thousand pages and hundreds of detailed exhibits almost each of which lends itself to lengthy argument, as a unit. Conversely the Respondents must be heard with respect to each item and the whole.

To attempt to select and analyze what appear to be salient elements must therefore evoke objections that not only have other elements, also salient, been omitted but that the entire picture relied upon has not been presented. Yet the alternative of reciting all of the facts developed at the hearing is not practicable for it would mean repeating most of the record and multiplying it many times for analysis of the pros and cons. That record remains available although we are perforce limited here to a precis of the testimony and exhibits. In fact, because of the repeated references and many cross references to various items, a detailed reference index would be necessary to insure coverage of all of the testimony and avoidance of repetition. (In fact, on completion of this report, I find not so strangely that I do have indices of the various subjects mentioned and of the exhibits, prepared to insure coverage of the salient points and to avoid duplication despite repeated references and cross references.)

While the briefs refer to various exhibits, the arguments, although sometimes detailed, are frequently general, and necessarily so having regard to the quantity of the evi-

dence and the nature of the findings sought. Most of the exhibits mentioned (many with little more than their citation and a phrase or sentence to describe them) and some which are not mentioned[9] are herein noted; it is unnecessary to point out the specific respect in which others do not prove what has been claimed for them. I do not delude myself into believing that the parties, the Board, or a court will accept my selection (and concomitant omission) of salient or representative points, not to mention my analysis of those points, although the same selection might have been received before unfavorable analysis.

Here is no nicely ordered bill of fare from appetizer to dessert or from soup to nuts. (Cocktails and liqueurs can be left for other tastes.) The smorgasbord spread before us is without such an orderly pattern. This is not to say that there is no plan or purpose: in lieu of nicely routined variety leading to a climax, we are surfeited by quantity. (The mass here compels redundancy). Even a generous helping can do no more than suggest what is on the serving platters. But who wants the entire buffet or a steam table? If it will not do justice to the General Counsel's case and the Union's position to cite only some of the items which they have noted, it is manifestly impractical to describe and analyze each one with the arguments pro and con. All have several times been considered, at the hearing (as was evident to counsel) and since. It is with full awarenss that there are many more, than I shall mention some typical or outstanding (in the sense that they are among the more persuasive which have been cited as proving or denying single employer status) items, and some others. The respective proponents may complain that a limited selection is *per se* improper; they will surely object that mine is at least unrepresentative. Aggrieved parties, whether on one

[9]Of the 81 exhibits received while Roger Milliken testified, 1 is not listed as such although referred to in the transcript, and 2 others are shown as having been marked for identification only.

side or the other, will likely take such exception (and more) at each stage of the proceeding although it will be necessary to recite the evidence not detailed here and to indicate its value in support of the exceptions thus taken. Even if not specifically cited in this Report, all of the testimony, written and oral, and the arguments of counsel have been carefully weighed even as it was clear that none was slighted at the hearing. Unwilling to leave to those who from mere reading of the record may not sufficiently familiarize themselves with the facts, I shall mention or specifically refer to approximately 175 exhibits, passing over only those which can most readily be seen to be without probative value, and including many not cited in the briefs.

Having said this, I must add that I do not mean to slight the painstaking efforts of counsel in preparation for, during, and, in briefs, since the hearing. In extenuation I can only and anticipatorily point to the determinations which will be made on review or appeal and which, whatever their conclusions, will undoubtedly cite relatively few facts in coming to a decision. Since I have been with this case in its various stages for such a long time, I may be permitted the observation that, having alone heard it and being the first to analyze the record and contentions to findings, conclusions, and recommendations, I should be more satisfied that the time spent in hearing and decision was warranted were accurate review and greater acceptance and recognition accorded to a Trial Examiner's rulings and conduct of a hearing and his report and recommendations.

On the other hand and in contrast to any charge of undue condensation, it might be urged, although this will be denied by anyone against whom a specific finding is made, that there is here an unnecessary detail of facts and analysis; that far less would suffice for all who have been concerned with these issues, and who have undoubtedly penetrated to the correct conclusions. But we must further make all

this clear to those who follow us (in point of time if not in agreement) in consideration of these matters; and heed must be paid to the injunction that reasons be here stated for the findings and conclusions made.

Since it was not within the issues presented at the original hearing and passed on in the first Intermediate Report, we can assume[10] that the remanded question of single employer status has been presented in connection with the question of remedy rather than for possible finding of violation by other, if related, corporations. Seventeen mill corporations (there is also reference to "eighteen mill corporations"), some of them wholly owned subsidiaries of others of them, and owning 27 mill plants, have been referred to and identified as related[11] corporations and Deering Milliken mills without prejudice to the issue before us. The relationship is alleged to be with Deering Milliken, DMSC, and DMRC. It is admitted that a majority of the stock in the various corporations is commonly owned. Appended hereto as Exhibit A are lists of officers and directors of Deering Milliken and Darlington as succinctly set forth in the Union's brief. Additional details concerning stock ownership and the officers and directors of the various corporations are in the record and need not be repeated here.

Another of what may be called basic financial facts is that Darlington and some of the other Deering Milliken mills operated on their own capital, i.e., unlike others of them it did not borrow from Deering Milliken or from a bank any capital needed to finance its operations. This affects the pattern of uniformity cited as existing in other respects among these mills. But it does not bear on the more basic

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[10] These preliminary and other speculative remarks arise out of a desire to provide what the Board will deem adequate basis for a decision.

[11] In using this term in its remand order, the Board followed the Union's offer of proof but quite evidently did not intend to foreclose the issue.

issue of control, which could exist or not regardless of uniformity in source of capital.

It was admitted and I find that Deering Milliken, a New York corporation with principal office and place of business in New York City, New York, acts as exclusive sales agent and extends credit to and factors the accounts of various textile mill corporations among which was Darlington; that during the calendar year 1956, as exclusive sales agent, it sold finished products valued at more than $100,000,000, which were shipped in interstate commerce to customers in various states throughout the United States; and that Deering Milliken is engaged in commerce within the meaning of the Act.

There is no claim that any of the various corporations other than Darlington, or any of their departments, was in any way itself directly[12] connected with the violations alleged. The allegations of extended liability in the amended complaint are the same as those brought in by the remand order, and depend on proof of single employer status; there are no new or additional violative acts, and it is only by some finding of taint in the other companies' relationship to Darlington rather than by acts on their part that additional findings of violation and liability can be made.

Neither has it been claimed that liability for the violations found should be widened because the mills, and specifically Darlington, have controlled Deering Milliken; rather, that the latter has controlled Darlington. But with exceptions such as those to be noted *infra*, this record discloses generally the natural business desires and activities which would characterize any independently controlled mill and selling agent or factor. (Since this a written, not an oral report, the reader's suspense has already been dispelled

[12]This is not a case of such control by a parent or other corporation that it may be said to have wronged or defrauded anyone insofar as remedy is concerned. Cf. *N. L. R. B.* v. *The Timken Silent Automatic Company*, 114 F. 2d 449, 450 (C. A. 2).

by a quick glance at the end.) That both mill and agent have common interests is not surprising: both want a sound, substantial, and reliable manufacturer, a saleable product, and sales. From such desire and purpose stem the various services, from joint purchasing facilities and engineering assistance to marketing service and sales, and including technical and administrative advice, which sales agents and factors commonly render and which were here rendered by Deering Milliken. Acceptance of facilities and advice is consonant with control; it is also consonant with independent status: it proves neither. (This is not to overlook the question of degree, infra.) But rejection of advice does negate control, and although we might expect general acceptance of advice and assistance from experts, there are instances of rejection, as we shall see. Nor does it appear that Deering Milliken's desire to sell adversely affected Darlington's or the other mills' operation to the former's benefit or for what might be an overall profit or benefit were the companies one.

Not only does integration of operations, which is compatible with independent ownership, management, and control, not prove single employer status between Darlington and Deering Milliken, but such status would not be meaningful in the present context. The problem of remedy here is not so much that of finding or following assets: enough remains in Darlington to cover most of the varied requests for backpay. Our greater concern is with continued production and continued employment; and Deering Milliken is no substitute for Darlington in that connection.

Detailed and lengthy as the evidence is, it centers (as has been noted, on Darlington's relationship with Deering Milliken, DMSC, and DMRC, with only occasional and sometimes oblique reference to the other mill corporations, as we shall see. Whether to extend findings of violation, or for purposes of remedy, or for whatsoever reason, the evi-

dence called for by the remand order and received might thus extend liability to these three DM corporations; but with respect to affirmative relief, only for backpay since these corporations do not themselves employ mill workers. The situation might be different were there proof connecting Darlington with the three "Deering Milliken" companies and, *through them*, with the other mills; for then reinstatement and bargaining possibilities would exist. The General Counsel and the Union clearly have not proved a single employer status of the mill corporations other than Darlington with the three DM corporations. It appeared to me at the hearing that the General Counsel recognized this (although he may argue that his review indicated the sufficiency of the proof in all respects) when he sought and received leave to keep the hearing open to consider an application for permission to offer proof concerning the question of "chain" connecting all of these latter corporations. As far as the other mill corporations are concerned, therefore, their liability must depend on the evidence of single employer status between them, or any of them, and Darlington directly, despite the present prayer that in the alternative Deering Milliken be directed to "reinstate these employees in other Deering, Milliken mills." (In addition to the extent of common officers, directors, and ownership of stock, referred to *supra*, we shall note evidence of dealings among the various mill corporations.)

If these statements concerning the limited basis for findings of relationship and liability are not clear to one who has not closely followed the ramifications and intercorporate dealings, it may be said, to simplify roughly, that the attempt was made mainly to lay Track A between Darlington and the three DM companies, with some light lines drawn between Darlington and other Mills; but there is no Track B between the latter and the DM companies which might, if Track A could carry the load from Darlington to Deering

Milliken, continue the run from Darlington via the Deering Milliken companies to the other mill corporations. Thus with very little (generally in connection with sale of some orders and inconclusive evidence concerning constructions manufactured, *infra*) submitted to connect Darlington with the other mills directly, and even less to connect DM companies with such other mills, there is no basis for imposing liability on the latter whatever may be shown with respect to the DM companies; unless the extent of cooperation among the mills as in their sponsorship of DMSC and DMRC can be held to create a joint liability.

The concept of single entity or single employer and any decision with respect thereto will vary with the field of law and the questions involved. Thus, while the framework of this case has been stretched beyond the issues raised by the pleadings and originally presented, it should not be presumptuous to note that we are ultimately limited by the nature of the inquiry and the scope of the Act.[13] To cite an instance, what we would recognize as separate and independent organizations might be characterized by such a degree of cooperation and joint effort as would violate the antitrust law. Toward the other extreme are cases involving jurisdiction,

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[13] "But administrative discretion is no broader or stronger in its field than is judicial discretion in its field, or legislative discretion in its field, or executive discretion in its field. Chief Justice Marshall said of judicial discretion, 'Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the Court to follow it. . . .' " Prettyman, *Trial by Agency*, page 8.

In *New York* v. *United States*, 342 U. S. 882, Justice Douglas declared at page 884: Unless we make the requirements for administrative action strict and demanding, *expertise*, the strength of modern government, can become a monster which rules with no practical limits on its discretion. Absolute discretion, like corruption, marks the beginning of the end of liberty." Some may question or object to this concept of expertise. The question is from one who highly endorses it.

where the Board, interpreting its own limiting standards, accepts jurisdiction in a case and over several entities even if it regards them as separate for the purpose of remedy.[14] Similarly in cases involving employer associations or local branches of nationwide organizations, as we shall note *infra*, while jurisdiction is taken because of the overall extent of interstate activities or the nationwide aspect of the business, the violation and remedy are assessed only against the violating segment. Our own concern with single employer status differs from that in these cases. The Board will here presumably stress centralized control of labor relations while also considering interrelation of operations and common management and ownership.[15] (It was noted in the original report that there was no claim that the sale at auction was

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[14]See *Radio Station KBTM, AM-FM*, 32-RC-1097, unreported, decided October 10, 1958, where the Board combined for jurisdictional purposes a jointly owned but otherwise unrelated radio station and grain elevator. See also *Orkin Exterminating Company, Inc.*, 115 NLRB 622, 624, and at 627.

[15]The remand order quotes the offer of proof in connection with the latter's claim of centralized control of operations and labor relations. See also *Central Dairy Products Company*, 114 NLRB 1189; *Metco Plating Company*, 110 NLRB 615; *Crenshaw's, Inc.*, 115 NLRB 1374. The importance of the element of control was recognized in the Union's offer of proof at the original hearing herein; and it was on the basis of that offer that the Board, declaring that "it is desirable" to have additional evidence, remanded the proceeding for further hearing.

See also *Dearborn Oil and Gas Corporation*, 125 NLRB No. 71, where, in denying that a single employer status exists "for the purposes of the Act," the Board noted that one of the three legal entities under consideration there rendered services to the other two on a cost-plus basis; its foreman and 3 of its 20 employees "were involved in temporary or permanent transfers between" it and one of the other two; the employees of this latter one were directed by the supervisors of the first "to an extent not specified in the record"; and all three used the same bookkeeper and the same office. The dissent, arguing that a single employer status exists, noted that "all the Respondents were under the common control and direction of one individual . . . in their business operations as well as in their labor relations," etc. All agreed that common control is the most important factor, and the majority, referring to "the crucial area of labor relations," stressed "centralized control of labor relations."

not to bona fide purchasers for value. One aspect, raised at the instant hearing, will be considered *infra* in connection with sale of orders.)

Actually the remand order calls for findings which go beyond mere control of labor relations: we have been asked to explore the existence of a single employer status. A measure of control might exist where there is no such status. This brings us back to the point where, whether we label our finding as one of complete control or of single employer status, Darlington's functions have been discontinued; and the three "Deering Milliken" companies (here excluding the mills), even if they had previously controlled those functions, cannot be considered the employer and cannot be directed to employ or otherwise completely remedy the violations found.

While Section 2(2) of the Act includes as an employer "any person acting as an agent of an employer, directly or indirectly," it does not appear that the related corporations here acted as agent for Darlington in connection with its labor relations policies. Certainly the responsibility and liability of an agent does not extend beyond the scope of his duties or activities. Furthermore, as distinguished from single entity, the question of agency on the part of entities not named as respondents would not be the subject of a remand at this point; it would await decision and direction of a remedy, and then be passed on in the definition of "officers, agents, representatives, and assigns" if that usual phrase were here adopted. It is unnecessary to repeat here, as was pointed out in the Intermediate Report of April 30, 1959, that whatever restrictions might be imposed on agents they would not be directed to carry the burden of positive remedy, i. e., to bargain, reinstate, or make whole—unless the elements of intent to evade and subterfuge were present so as to make them liable for the violation.

If as has been suggested the evidence fails to show a single employer relationship between Darlington and the

other mills, and no remedy can be imposed against Deering Milliken, such facts alone would appear to dispose of any aspect of our inquiry which is relevant to the issues raised by the pleadings. But we continue with the testimony received under the remand order.

With the conclusion of this introductory portion, it is clear that this report is extended because of the quantity of material received, the number of claims and questions raised, and the extent, although severely limited, of the necessary written analysis of even a portion of that material. A general resolution of the issue presented by the remand order could quickly be made on the overall impression; a so-called "common sense" generality might be uttered which would not even begin to support one position or satisfy the other (a fatuous hope), and which would omit the reasons which point to the decision to be made. While the evidence does not and need not lead to Descartian certainty, I submit the conclusion in this case with less doubt than frequently exists, as in resolution of questions of credibility.

Findings of Fact (with reasons therefor)

Decision here does not depend on resolution of credibility: testimony and exhibits were received without contradiction with only occasional aspects which called for attempts to reconcile or explain. We are left with the need to draw inferences rather than to establish credibility; and with respect to inferences the Board, as it has frequently noted, need not rely on the Trial Examiner's findings and conclusions as it does on his credibility resolutions.

We have been informed that no stone or paper which related to Darlington and any of the corporations was left unturned in preparation for this hearing, and that everything has been submitted which might conceivably show the relationship claimed by the General Counsel and the

Union (and some which could not conceivably show it). The unnecessary is superfluous. But what, which can be analyzed, will be superfluous, and to whom? The feasible method here appears to be to consider all of the evidence cited by counsel and their arguments, and then, without detailing such evidence and arguments except those which appear to be most weighty, to summarize them and make findings. We now turn to the very real problem of being temperate and selective in our analysis to avoid an evidentiary crapulence while at the same time doing full justice to the proof.

The facts concerning ownership of stock in the various corporations are set forth in an exhibit in evidence and, uncontroverted, need not be detailed here. It is conceded that members of the Milliken family, directly or through ownership of stock in other corporations, own a majority of the voting shares of Deering Milliken and of various mill corporations, including Darlington. The question of piercing the corporate veil is considered *infra*.

Omitting for the moment any questions of ownership or control of other corporations, Deering Milliken is a sales and factoring corporation. Its services to the mills, in sales, tax-wise, etc., will be described *infra*.

DMSC shares are owned by the mill corporations affiliated with Deering Milliken, each such corporation owning one share for each of its mills. Thus Darlington, with one mill, owned one share in DMSC. The mills are not required to avail themselves of DMSC's services, various phases of which will be hereinafter described, nor are they prohibited from using such services from other sources. The service agreement between each mill and DMSC is terminable at will on notice, but, except on liquidation, none of the mills has ever terminated its agreement. There are no service agreements with any domestic mills other than Deering Milliken mills. It was testified that work by DMSC for the

mills was at their request, and that "lack of uniformity" among the mills was uniform, some recommendations being variously adopted and rejected by the mill treasurers. As in other respects, it does not appear from the mass of documents considered in this connection or from the greater number examined by the General Counsel, that control was exercised outside of the respective corporations or that decisions were imposed on them by Deering Milliken, the service or research corporations, or other mills. In connection with operating procedures and maintenance, a system of demerits and comparative mill records was developed by DMSC to assist the mills and to serve as incentives. There was no element of any penalty which was or could be imposed by DSMC. Prior to 1951, when DSMC was organized, the industrial engineering department at Judson Mills serviced the other mills.

DMRC was organized and maintained as a cooperative effort by the Deering Milliken mills and Deering Milliken for research and advice when called upon. The mills contributed to DMRC in proportion to their sales, and Deering Milliken according to its commission income. Reference was made at the hearing to memoranda which noted research on machinery types and improvements, and assistance in maintenance programs, as we shall note.

Various functions of these three corporations and points of contact among them and various mills will be noted infra. Neither the General Counsel nor the Union claims economic homogenization of the various corporations and mills and their business. The organization of these entities does not itself indicate single employer control over the mills. Rather it is urged that the contacts and relations shown indicate control and single employer status. The elements of control may be different in various situations: in large operations, in small, in one industry, in another. But control there must be if single employer status is to be found.

As distinguished from ownership,[16] execution of policies at the various mill is in the hands of the respective treasurers. Even in cases where a permanently binding and exclusive arrangement exists that fact does not *per se* indiciate single employer status. There can be various degrees of cooperative activity among several entities without such control as to constitute the entities a single employer.

The corporate by-laws and the evidence in that connection indicate that the chief executive officer of Darlington was Oeland, its treasurer, not Roger Milliken, its president, their authority typifying those positions in cotton mills generally, according to the evidence. As I have found in the proceeding against Roger Milliken individually, Oeland was Darlington's "chief active or operating executive" and this is apparently conceded. He alone was authorized to spend $25,000 for capital additions for the year ending November 1955; and the officers were jointly authorized to spend an additional $100,000 without approval of the directors. While president of Darlington, and except for his employment of Oeland, *infra*, Milliken had never hired, fired, or transferred any employee; this was done by Oeland as treasurer and administrative head.

Here the question naturally intrudes, Because of the extent of Milliken family ownership, were Roger Milliken's wishes in fact commands to the mills? But Minot Milliken and Roger Milliken testified that at various times suggestions or proposals by the latter to mill treasurers have not been carried out. They appear to have been no more controlling than were suggestions from sales personnel or others who sought to assist the mills, the decision remaining with the mill treasurer. Even a presumption that Roger Milliken's suggestions received greater consideration might be unwarranted since full consideration was evidently given

[16]The differences should be clear: stock ownership; control of policies other than labor relations; control of labor relations; single employer status.

to suggestions from all expert and responsible sources; as noted at the hearing, the achievement of optimum results is a general desideratum. Milliken could plan, urge, and exhort; he did not control. If, as the Union claims, directions which "were usually stated politely as 'suggestions' or 'advice' " were constant in their flow and exact in specificity, control was not proved thereby. More in point is the claim that "the record leaves no doubt but that the understanding by both commander and commanded was they were to be followed." But, as noted, the record is replete with testimony concerning suggestions which were not adopted.

Besides the points that actual control and authority lay with the mill, not with Deering Milliken, and that Roger Milliken, as we shall be reminded, was a mill officer, the question is raised whether in offering suggestions to the various mills he was acting on behalf of Deering Milliken and attempting to exercise control for the latter. Many documents in evidence and described in detail might be discussed here in this connection. All have been considered but the principles which govern them need not be repeated with respect to each. We have a memorandum dated November 14, 1956, from him to various mill treasurers and to various DMSC people, to which are attached a quotation from the October 1956 Newsletter[17] of the South Carolina Chamber

[17]This is to be distinguished from a Newsletter which Oeland sent weekly to Milliken. Shortly after his arrival at Darlington, Oeland said "that if it was all right with (Milliken), he would like to keep sort of a personal diary which he would like to put in the form of a weekly letter to (Milliken) so that he could put down what he was working towards, what his goals were, and what his accomplishments had been." Milliken apparently never commented on these Newsletters. He also received a monthly letter from Monarch; no newsletter from any of the other mills. The Newsletters indicate a desire by Oeland to gain Milliken's approbation beyond what would follow from successful operational results. This is further indicated by Oeland's requests for Milliken's opinion and approval. Originating with and voluntarily continued by Oeland, they do not indicate diminution of his authority or of the authority of the various mill treasurers.

of Commerce and an article and editorial from America's Textile Reporter of November 8, 1956. The Newsletter refers to turmoil and inefficiency at a stranger mill since a labor contract was signed several months before, and the announcement that the mill would be closed the following month.

Milliken's memorandum declares that the union leaders had misled the employees and that Darlington had been negligent in its public relations; it urges that the recipients of the memorandum make a mental review of the steps which they were taking to bring about an understanding of the respective mills and their problems in the community. The memorandum concludes, "The unions are going to be making a tremendous drive all through this area, and there are few things that are more important to us than making sure that the leaders in your community understand and are sympathetic to what you are trying to do." This memorandum is not to be analyzed as if it were a document prepared after thorough study of its every word and implication and their legal significance. Milliken's interest in all of the mills is not to be regarded as Deering Milliken's (of which more *infra*) and certainly does not prove single employer status. But even a technical analysis here could show only the distinction between the importance of the matter to "us" while "you" are trying to do the things which need to be done. So far from proving Roger Milliken's or Deering Milliken's control "in dealing with the problems of labor relations and of unions" (in the words of the Union's brief), the memorandum indicates rather that those problems were handled by the mill treasurers and that Milliken was here "alerting" them and pointing out to them an area in which he believed that *they* could function.

The exhortation in the magazine is addressed to textile mills throughout the industry. No more than this indicates

a single employer status throughout the industry does Milliken's distribution of the article indicate single employer status among that Deering Milliken mills. The call for "contact on a local and national level for larger firms, operating in several areas" reflects the magazine's impression that there are larger firms which operate in several areas; it does not prove the existence of such firms or that the corporations before us constitute one of them. What is then pointed out concerning "Darlington officials who decried the utter lack of any attempt at public relations before, during or after" the union campaign would be as applicable whether or not Darlington were part of a "larger firm." Thus there is no evidence here that Darlington was part of a larger firm and certainly no proof of multiple plants in a single employer status. Hence, aside from the question whether Milliken, by distributing the article, adopted its remarks, there can be no question concerning the significance of the remarks themselves.

On the right hand column of the article's second page as reproduced and distributed is an editorial. This declares, "If the people of Darlington knew anything of the Deering, Milliken record they would know that management does not intend an unprofitable division, nor has it intended to share the prerogatives of management with labor union leaders." Milliken testified that, although he distributed the editorial, he did not subscribe to all of its statements; he undertook to explain why he could not subscribe to the sentence just quoted. In fact, the General Counsel stated his belief that the editorial refers, not to Deering Milliken's management, but to the various mills. After pages of testimony and discussion on the record, we thus conclude with not even the claim that this refers to or tends to prove single employer status. Whether correct or not in his estimate of the value of the article and the editorial (and the Newsletter), Milliken sent his memorandum out because he believed that these

called for action by "all textile mills," not as noted after review and expert advice concerning the legal significance of the statements therein made, as one can believe and even reasonably assume.

Time and again, as we received in evidence memoranda recommending action by Darlington, it was shown that Oeland rejected the recommendations. An exhibit most directly related to the violations heretofore found is a letter dated 1 month before the September 1956 election, in which Oeland indicated that he had decided and was carrying out his plan to "fight the union's activities"; that he had so informed Poag, Darlington's attorney; and that he had gotten Poag's approval to continue. Such "approval" of an important policy already adopted by Ooeland does not indicate that Oeland's was a subordinate position.

Also in evidence are communications in which Oeland requests or anticipates "approval." But it will be seen that in those cases his reasons were generally accepted as convincing, and the approval forthcoming. Certainly his rejection of advice from others stands undiminished in significance. In one of the letters last referred to, he persists, in a recommendation contrary to advice from Poag; and quite confidently in tone, as if the decision had already been made, submits it for Roger Milliken's approval ("I would like to have your approval before we move in the matter"), still looking forward to Poag's approval, which certainly does not appear to have been any *sine qua non*.

Thus it does not appear that Darlington was under compulsion to join in various efforts, whether purchasing, selling, operational, or that it was not free to terminate the relationships which existed. The record shows that from time to time mill treasurers took action or made decisions vis-a-vis other Deering Milliken mills or corporations. It does not appear that those actions or decisions were controlled by Deering Milliken. Time and again correspond-

ence submitted in evidence to show control indicates rather that suggestions were submitted, received with "appreciation" by the mill treasurer, and by him accepted or rejected. Nor is there evidence of conflicts of interest between Deering Milliken and Darlington which were resolved against the latter. We shall see that the evidence does not show loss of separate identity, permanently binding and exclusive arrangements, single employer status, or liability of one corporation for the unfair labor practices of another.

The functions of purchasing of equipment and material, personnel recruitment and advice, sales and its concomitant of styling, tax savings, etc., etc., are as vital to the proper conduct of textile manufacture as is the role of an egg in an omelet. If the egg is not obtained from one source, it will be from another.

In some cases the poultryman may employ and direct the cook in a truly integrated and single entity status; he may even be the consumer. But use of the egg and acceptance of the advice do not prove employment of the cook or control over him by the poultryman. For this we must look to factors which do prove control. The role of the egg is not a whit less important where the poultryman and the cook are quite independent in their decisions and actions. The former, with knowledge of his product (or the market), may be in a position to advise concerning its optimum use. The latter may well adopt the advice; or, having received and even sought it, he may reject it. Advice and assistance are one aspect; control is quite different even if the advice is so clearly good that it would be foolhardy to reject it and it is uniformly followed.

In the instant case it is clear from the evidence before us that, however frequently advice from Deering, Milliken, DMSC, DMRC, other mills, or Roger Milliken was adopted, it was not uniformly followed by the various mills or mill treasurers, or specifically by Darlington or Oeland. This

should be sufficient to refute the claim of control inherent in single employer status. But we shall go further and consider various instances which may suggest control (even if we thus ignore the plausible argument that elements which are among those which exist where there is control do not prove such control in the face of the denial and absence of other elements which cannot be denied and must be present where there is control).

Leaving for later consideration all comparisons with other factors and their relations with mills which they represent, we must consider the significance of such terms as "DM mills," "our mills," "our organization," "mills affiliated with Deering Milliken." It was testified that in industry parlance, mills are referred to as XY mills where XY is the selling agent or factor but has no other financial interest and the mills are independently owned. Thus mills which are alleged to be recognizably independent and do not occupy any single employer status are referred to as Cannon mills, Iselin-Jefferson mills, etc. (We shall later note the facts and actual relationship among mills within such groups.) At least partial explanation may be found in the testimony that an advertising agency pointed out the difficulty in acquainting the public with multiple names, and advised that in advertising even "Deering Milliken" should be avoided, with emphasis to be placed on the single name "Milliken."[18]

Analogous situations in other industries were noted: AMC stores being a group of independent stores or chains banded together for buying economies; CBS radio and television stations, very few of which are owned by CBS, the others being financially independent; and Howard Johnson restaurants, where the outlets are individually and separately owned, the name being used for advertising purposes and to

[18]One aspect of this single-name emphasis will be considered *infra* in connection with an exhibit entitled "Fabric Magic by Milliken."

indicate that a uniform type of operation is maintained. Here, as in Romeo and Juliet, one can ask, "What's in a name?" This does not dispose of the issues before us. But it serves the negative purpose of showing that use of a name jointly does not show single employer status. Decision must be based on such other evidence as has been offered. In this consideration of impressions and descriptive references as distinguished from proof of actual control and status we can note that there is no evidence that the employees of Darlington ever considered or referred to themselves as employees of Deering Milliken or of any of the other mills or mill corporations.

As I stated in overruling an objection made on the ground that certain exhibits offered by the General Counsel were immaterial since they did not support the proponents' burden of showing integration, proof of given activities which do not show integration is material to the issues before us, especially where such activities and proof are extensive; for to the extent that these activities, although they might be of such a nature as to show single employer status, do not show that status, they tend to deny its existence here and limit the possibility of a finding in conformity with the Union's proof. Similarly, as the General Counsel touched on possibilities which, were they in existence, would tend to show single employer status among these corporations (guarantee by other corporations of a loan to one of them, to cite an example), the fact that the relationship or activities thus inquired into were nonexistent tends to indicate that there is no single employer status.

Activities indicated among the corporations here, which characterize the relationship among factors and independent companies which they serve or among cooperating but independent companies generally, tend to show an independent status here. In fact, I consider the relative number and the nature of the activities which are common among in-

dependent companies if no attempt was here made to list all of such activities;[19] as on the other hand I consider the number and nature of activities which are not usual in independent relationship but which did characterize the relations here. The Board may prefer a different statement of the rule be applied here. But however the basic principles be declared, the fact is that the activities and relations among the various corporations do not show a single employer status.

We shall soon note items which most nearly of all those submitted suggest single employer status; these are few and certainly not determinative. The most persuasive are scarcely, certainly insufficiently, so. Our task would be greatly simplified could we point to certain items as clearly probative of single employer status;[20] i.e., that certain items exist here and where there is single employer status, and are never present where there is no such status. (We have already mentioned the importance of showing centralized control, especially of labor relations). But we are unable to do that. Neither can we, nor need we, prove the universal negative.

As presented on the record, certain evidence immediately suggests independent status. (Such evidence is in contrast with items which do not indicate either independent or single employer status, and those which suggest the latter.) Thus there were suggestions to Oeland and other mill treasurers from Deering Milliken, some of them adopted, others rejected, the decision in each case quite evidently made by the mill treasurer. To cite one instance, a letter to Oeland from

[19]Admittedly there were many contacts among the various corporations here which did not suggest to the General Counsel in his prehearing investigation a single employer status.

[20]Certainly in the lengthy oral testimony and the many exhibits there are no one, two, or five facts which can be relied on as proving the General Counsel's case. This is attested to by the length of the briefs in support and the number of items relied on therein, and it makes necessary a voluminous analysis of many items which are not probative in lieu of recognition of a few which might be.

Deering Milliken's order department transmitted a suggestion by Roger Milliken that the mills apply bale numbers to lessen warehousing problems. Declaring that Darlington had no problem in that connection, Oeland closed his reply as follows: "We appreciate your *willingness* to *work with us*, and if the occasion arises we will take it up with you." (emphasis supplied)

Again, a suggestion from Deering Milliken's Controller's office that the fiscal year end on Sunday, November 27, 1955, instead of November 30, was followed by the mills only after the respective Board of Directors decided that it was "a good idea" and adopted it. A Standard Practice Instruction was thereafter issued to the mills by the Controller, setting forth the dates to be used in closing the financial records of the corporations whose fiscal year ended on November 27. Although as peremptory as administrative details are when reduced to writing, the Instruction reflected the decision already made by those corporations.

Thereafter Smith, the vice president in charge of Deering Milliken's credit department, asked Oeland to what extent Darlington's large credit could be reduced to demand notes to be left at least through November 30, 1956, almost 7 months off. Oeland replied that, after analysis of its cash requirements, Darlington could invest only a small portion for the entire period although it could, if so desired, put an additional amount into notes to be liquidated when Darlington needed cash. Clearly the decision here was Darlington's, with a further tentative and indefinite commitment by Oeland. From Deering Milliken came a suggestion; from Oeland a limited agreement without further obligation. Smith's reference to Darlington's "current account" was to its balance at Deering Milliken; his concern was not with Darlington's balance sheet, profit and loss statements, or other accounts.

Further evidence of Darlington's independence is seen in the testimony by Minot Milliken, Deering Milliken's

treasurer, that he lacked information concerning Darlington's property records, has nothing to do with such records at the mills, and is not acquainted with the form in which the mills maintain records. He also testified that Darlington's stock transfer registry had been at the mill in Darlington, that stock transfer questions were referred to Oeland, and that the latter in turn referred legal problems to counsel in Darlington.

Because of the emphasis on the question of centralized control of labor relations in cases involving violations of the Act and extension of liability for such violations, our inquiry should devote special attention to the labor relations of the various corporations which allegedly occupy the single employer status. But here the proof of uniformity is meager indeed. Hours and conditions of employment were determined by each mill for itself, and there was no uniformity among them. The so-called Deering Milliken Vacation Plan has been cited as a common labor policy referrable to Darlington and other mills. Pacolet, one of the mill corporations, conceived a vacation plan, discussed it with Kable, the head of Deering Milliken's tax department, and sought the best tax counsel available before applying for and obtaining a beneficial ruling from the United States Treasury Department. The plan was proposed or submitted to other mills, and thereafter it was up to the Board of Directors of the respective corporations to adopt a like plan to the extent applicable. This is the testimony as received; an exhibit in evidence declares Oeland's understanding of the advice to Darlington's Board of Directors in this connection by Kable's office so that the vacation plan previously in effect at Darlington might be continued without imposition of any change by an Internal Revenue agent.

To the extent that an inference of a common or similar vacation plan might be warranted, the evidence of common joint activity here is entirely consonant with and indeed in-

dicates independence [21] of decision. If some mills used a substantially similar vacation plan which was given the Deering Milliken label, control over the mills is not thereby shown. Here, further, the changes initiated by Pacolet merely assisted Darlington to continue what it already had in operation. Minot Milliken testified that he believes that the mills have various plans and that no one at Deering Milliken is acquainted with all of those.

Another plan which bore the Deering Milliken name, and was adopted at some of the mills, is the Deering Milliken Mills Retirement Plan (to be distinguished from the Deering Milliken Retirement Plan in effect at Deering Milliken itself). All of the mills' salaried employees are covered by the mills' retirement plan, and during the course of a discussion some of the mill treasurers wanted to know what the additional pension cost would be to each mill if their second hands, paid hourly, were put on salary. Lowry of DMSC thereupon called on the mill treasurers for such information as age, salary, and length of service so that the cost could be determined on an actuarial basis. The actuary's report was then submitted to the mills, each of which then decided whether to extend its retirement plan: some did, others did not. It was further explained that each mill adopted the type of plan which it preferred. The plans are grouped as the Deering Milliken Retirement Plan for purposes of investment, but lack that uniformity which a single control would dictate. That there are no differences in options among the various mills no more proves integration among the mills than does provision of similar plans by various insurance companies indicate integration among the latter or their insured.

There is nothing to suggest that the inquiries which initiated the retirement plan studies could not have been

[21] This factor distinguishes the instant case from *Bethlehem Steel Corporation* v. *N. L. R. B.* 120 F. 2d 641, and similar cases cited by the General Counsel.

made elsewhere. But here was a convenient source of information. If payment had to be made for the time spent in obtaining advice, it was presumably cheaper when put on a mass basis. As in the case of other tax assistance, *infra*, the same firm of tax specialist attorneys was called in. The extent of cooperation among the mills does not lessen the evidence of their independence. It will serve no useful purpose to describe all other examples of cooperation, with independence of decision, which indicate independent status. But other instances will be introduced by reference to the respective claims herein.

Wages are a most significant aspect of labor policy and relations. That aspect here does not indicate single employer status. When Darlington's wage rates were considered here and at the original hearing, it was testified that they were different from other southern or South Carolina mills. Comparison was thus general, and there was no suggestion of similarity or even comparison with other Deering Milliken mills although references were made and comparisons with them were attempted in other respects. In short, there was and is no evidence of a common wage policy. Uniformity has not been shown, and Oeland now testified that piece and wage rates and premiums at Darlington differed from those at other Deering Milliken mills. He made changes in wage rates after discussions with the overseers and superintendents; he did not consult Milliken, Deering Milliken, DMSC, or DMRC, nor does it appear that he was governed by any recommendations from these latter.

Labor policy (in fact the very events which preceded the violations found) was directly involved when in August 1956 Oeland called on his friend Glenn, employed as director of industrial relations at Monarch mills, to advise him in connection with the organizing and election campaign at Darlington. In his Newsletter of September 28,

1956, Oeland informed Milliken that Darlington had paid Glenn for his expenses and had reimbursed Monarch for the time during which he had been away from his job there.

There was no intercorporate relationship here. Neither Monarch nor Glenn was under obligation to assist Oeland. The latter called on his friend Glenn and thereafter sent him a check in appreciation. This episode reflects on several items which concern as: the personal rather than corporate relationship, just noted; Oeland's authority on behalf of Darlington; and the latter corporation's responsibility as quite separate from that of Deering Milliken or Milliken personally, with whom Oeland did not discuss Glenn's services until after they had been rendered, although Oeland believed that he had informed Milliken in a Newsletter.

We are also asked to rely on so-called striking similarities, with some sections identical, others almost so, between the Darlington employees handbook (which had not been distributed since at least 1951) and handbooks at Judson, Drayton, and Monarch mills as indicative of single and overall control of employee relations. These similarities have been minutely detailed by the Union.[22] The handbooks have not been copyrighted. As we shall again note, good ideas are not to be discarded merely to be different. Whether other Deering Milliken mills besides these have handbooks, whether any such are different from those here referred to, whether handbooks at outside mills are similar, we do not know. The similarities indicated are not probative; they have not been shown to be characteristic of Deering Milliken mills and exclusively so, nor do they meet the objections pointed out in connection with other evidence received, that they are consistent with both single employer

[22]On behalf of the Respondents it has been argued "That no two of these employee handbooks are alike" and that there is no basic uniformity among them.

and independent status. Here as elsewhere, while various similarities do not prove control, dissimilarities are significant.

A most meaningful and important element connected with actual operation of these mills and their factor, is their competition in constructions. Under an integrated or single employer operation the various mills would make constructions which would complement one another and together constitute a full line; they would not compete in given constructions. Yet the testimony is that Darlington had lost business to other mills, either Deering-Milliken or non-Deering Milliken mills, because it had not been able to produce wider goods. May, Deering Milliken's vice president in charge of print cloth sales, gave advice, as requested by Oeland, on the basis of his ability to forecast sales so that the mill could plan its production with that in view. This followed by about a month an inquiry from Monarch's treasurer to Oeland concerning a certain construction which was too wide for Darlington to handle. While cooperating with Monarch, Darlington took steps to handle such constructions itself by acquiring wider looms. With respect to a market for wider material which Monarch mill was then producing, there was no question of subordinating sales of any such widths which Darlington might manufacture. In fact, before its liquidation (this was cited in connection with the earlier findings of violation), Darlington had begun to install wider looms.

Detailed as was the examination of production records and of witnesses concerning constructions manufactured by the various mills, there is no evidence that one mill avoided a given construction to favor another mill; or that competition among these mills in their manufactures and attempts to sell was restricted as by existence of a single employer status. We have just seen that there has been no centralized control of labor relations. We shall note *infra* that it

does not appear that, when it was liquidated, Daslington's constructions, accounts, and orders were transferred to the other mills as mere successors or *alter egos.*

Not only can it be said that the proof does not show integration among the various mills in cloth manufactured; in fact it appears that they are competitive since given constructions have been through the years made by more than one of them. There were requests for information and advice concerning possible competition but in all the mass of evidence before us there is none which indicates deference by one mill to the profit-making interest or intent of another in purchasing, manufacture, sales, etc. Yet harmonization and deference would characterize a single employer status existing directly among the mills or indirectly through their respective relationship to Deering Milliken. While deference or enforced limitation on manufactures would indicate single employer status, availability of and requests for information and advice do not.

The point was noted at the hearing and later argued that Deering Milliken control was exercised to the extent that acceptance of a product as premium depended on salesmanship. But this a common aspect of salesmanship; to this extent it may be said that every salesman "controls" his principal or determines its success. There is no evidence that Deering Milliken or its salesman preferred one mill to another, and certainly none that one mill was compelled to defer to another in either manufacture or sales.

The mill treasurers' independence in deciding what their mills would make has its counterpart in their independence in sales policy. Some are "free sellers," making sales commitments well into the future while others, more conservative, sell for early delivery; and in some instances a long term policy is adopted on certain constructions and a short term on others. There is no control of one mill by another in this respect, nor any overall control by Deering Milliken or Roger Milliken. There is testimony that

"(t)hese treasurers were highly competitive in their outlook. And if they could see that one treasurer had achieved something at one of his mills they felt that they probably could do likewise." This suggests the absence of restraint on their competitive and self-favoring outlook, which might have been exercised by a central control.

It is true that the industrial engineering department of DMSC worked with the smaller and more limited industrial engineering departments at the mills; and when the mill treasurers at their meeting agreed that each mill would work on a certain project involving mechanics of production and that they would later exchange information to improve production, DMSC's IED advised the mills' i.e.d. concerning the course the project should take. This cooperative effort among the mills was typified by assistance given by Darlington to Gaffney in connection with specifications for high speed looms. Another instance is the exchange of information, which we have just noted parenthetically, between Darlington and Monarch concerning a construction which was too wide for the former's looms. Such interchanges of information, like other activities of mutual benefit, have not been shown to have been forced on Darlington or any of the other mills. Rechecks of competitors' cloth were performed at some mills at the request of the mill treasurer, the charge being made to the requesting mill. A further element of cooperation enters where more than one mill benefits from a given recheck; there is no joinder in sharing the cost but the purchases for recheck are scheduled to accomplish that objective. That the liability of each mill was based on the service performed for it is further indicated by a later proportionate billing for an accumulated rechecking deficit.

A further example of cooperation between DMSC and Darlington is seen in Roger Milliken's suggestion which prompted Oeland to write to Defore, who is in charge of

the fiber quality control and research department of DMSC, for information concerning certain frames. This does not show any control of Darlington from without; Roger Milliken was its president.[23] If we heed the argument that he was also president of other mill corporations and of Deering Milliken, and that these facts, with the stock ownership shown, prove single employer status, we have wasted a great deal of time in this hearing; those facts were known before the remand order issued.

As for Milliken's activities on behalf of the various corporations, the emphasis given that in the briefs is misplaced: the issue is rather one of control of one corporation by another or of common policy so established and exercised as to indicate single employer status. The "relationship" abundantly instanced by the General Counsel is not one of control of mill policy or activity generally or of labor relations specifically. To cite suggestions by Milliken to the mills as illustrative of his control[24] may mislead anyone whose attention is not called to the testimoney that those suggestions were reviewed by the mill treasurers, that decisions were separately made by the latter for their own mills, and that the proposals were in many cases not adopted; also that in many cases, Milliken did not even receive replies from the mills to his suggestions or requests for information. So much for possible "impact" on mill personnel of Milliken's attempts to follow up on his proposals or "to make sure" (quoting the General Counsel) of "some thought" at the mill level. Whatever Milliken's ideas and the scale of his thinking, control is exercised at each mill. As spread on the record and even as described by the General

[23]Despite Milliken's desire that the frames be bought, they were not.

[24]The General Counsel does not strengthen his position with respect to either violation or remedy when he leaves the concept of control and notes that "chain operation" is here indicated. This aspect is considered *infra*.

Counsel, Milliken's proposals appear to have been more nearly precative than authoritative.

Nor need more be said here than was said at the hearing concerning a pencilled draft prepared prior to filing of a report with the Federal Trade Commission, the draft having been found in Darlington's files. Darlington's accountant (bookkeeper), who evidently prepared this draft for the period immediately preceding the company's liquidation, checked item 4 of the printed form, thereby indicating that Darlington was a subsidiary of Deering Milliken. While this draft is properly before us as a record, even if erroneous, prepared and kept in the regular course of Darlington's business, it is relevant and necessary to note that correction or change was made prior to filing with the Federal Trade Commission so that as filed the report declared that Darlington was not a subsidiary of any other corporation. Attention to this item can only emphasize self-serving statements which do not help carry the General Counsel's burden. The report thus filed was the last of three; and those for the two earlier periods likewise recite that Darlington was not a subsidiary of another corporation.

Some items, although presented in detail at the hearing, are quite equivocal[25] on the question of independent or single employer status. We have already considered vacation and retirement plans. On another aspect of employee relations, an employee of one of these corporations is occassionally made available to another, the change in most cases being from DMSC to a mill as when a mill seeks the full-time and permanent services of a DMSC employee who has advised

[25]The General Counsel appears to recognize this as he cites a window-cleaning analogy to show that performance of acts by independents does not "disprove" relationship. But the need here is to *prove* the relationship alleged by the General Counsel and the Union; and this is not done by a mass of evidence which does not disprove it. As noted, we cannot substitute such evidence for the necessary proof of control.

or otherwise assisted it. But this is not an unusual procedure between independent consultant organizations and companies which they service, and even between business firm and their clients. Specific reference in the record to several employees (in the generic sense) who were employed by more than one of these corporations may be recalled. Thus Oeland had himself been controller at Monarch when in 1951 he accepted the position of treasurer at Darlington. The former treasurer having decided to retire, Robert Milliken discussed the change with Oeland. While formal employment arrangements would be handled by the Board of Directors, it was natural that the president of the Company should discuss the matter with Oeland. If we must search out every possible basis for inference, it can be noted that Milliken did not as president of Monarch seek out Oeland; William Sibley, Monarch's treasurer or manager, told Oeland that Milliken wanted to see him. Oeland's tenure at Darlington depended on his success there, and he was so told; but he was also told that he was to be in complete charge and that, whether or not he sought advice, the responsibility for decisions would be his own.

Before any conclusion can be drawn from this employment sequence from one Deering Milliken mill to another, we must consider whether it is more significant than Oeland's earlier move from a non-Deering Milliken mill. It does not appear that in either case there was more than an individual's natural and successful attempt to obtain a better job. The relationship between the different companies was no more nor less independent in the one case than in the other.

Other testimony showed that Allen Sibley, vice president of Pacolet, designated officers of some of the companies (not Darlington) to be general manager of other Deering Milliken mills. Positions as manager of some of these mills were also made available to a few top supervisors of other

Deering Milliken mills. On the other hand, managers and top supervisors were in about equal number taken from companies outside this group.

These and other instances of which we have details do not indicate that general transferability or maneuverability of Darlington's employees which might characterize a single employer situation. Voluntary cooperation is as readily understandable here as in other connections: not only does the new employer gain the employee whom it seeks, but the former employer creates an incentive for others who might likewise be interested in change and improvement of status. Whatever the relationship among some of these companies, in none of these instances does there appear to have been any overriding control by another corporation over Darlington in the change of employment.

If, as counsel for the Union argued with reference to some of these mills other than Darlington, "the exchange of employees in all of the respondents held (sic) to be included in the single employer status is one of the paramount facts that determines whether there is a single employer status," the showing here is weak indeed; and without consideration of the argument by counsel for the Respondents that, whatever movement from one company to another (other than Darlington) may prove with respect to their relationship, it does not bring Darlington into single employer status with them.

One change which, because of the language employed, might be listed *infra* among the items which do suggest single employer status, is the "promotion within the Deering Milliken mills" of W. H. Stallworth. Using these words in a memorandum, Oeland explained that Stallworth, who had been card room overseer at Pacolet plant, had been made production superintendent at Darlington. Conceivably Oeland was overenthusiastic in stressing the element of incentive. Certainly nothing in this change of employment except Ocland's language in describing it indicates a single

employer. The same memorandum declares that Mullendore, Darlington's former production superintendent, had accepted a position with a cotton mill in Georgia, not one of the Deering Milliken mills. Aside from Oeland's language, Stallworth's change of employment no more indicates a single employer relation between Darlington and Pacelot than does Mullendore's indicate such a relation between Darlington and the mill in Georgia. Here it may be pointed out again, as at the hearing, that the evidence which is cited as characteristic of single employer status must likewise be incompatible with independence if the General Counsel is to prevail.

Later, when Oeland informed Lowry on a visit by the latter to Darlington that Stallworth was not satisfactory as production superintendent, Lowry declared that he could use Stallworth's experience in the IED, and hired him. Thereafter, writing to Stallworth concerning cancellation of his incentive bonus, Oeland refers to his having been "transferred to D. M. I. E. D." Here again we are concerned with the accuracy of Oeland's impression or the accuracy of his use of terms. We shall see *infra* that there was no "D. M. I. E. D.", but as referred to above, an IED at DMSC.

Immediately thereafter Oeland wrote to Lowry concerning "transfer" of Goodwin, DMSC employee, to succeed Stallworth as production superintendent at Darlington. This was after Oeland and Goodwin had talked and "come to an understanding" concerning the latter's new job. Johnson, who in 1951 started in the placement department which functioned for some of the mills (the record is not quite clear on this point), became personnel manager at Judson mills. When DMSC was set up, he became head of its placement department. Thereafter he returned to Judson mills as its personnel director. Lowry testified that one of his industrial engineers, Hubbard, had prior experience at Judson mills. But at the same time it

was brought out that Lowry's assistant, Moss, had come from a subsidiary of Owens-Corning Glass. There is no indication that any more significance attaches to the change of employment of the one within the group of corporations before us than to the change of the other from an "outside" corporation.

More generally and in the main perhaps on a lower level than most of those just mentioned, it was testified that in 1955 and 1956 approximately 10 IED employees of DMCS had gone to work for mills selling through Deering Milliken; and that perhaps 2 or 3 had gone from the mills to the IED. There were also hirings from and losses of men to other mills. These changes in employment do not show single employer transferability. Kable, secretary and assistant treasurer of Deering Milliken, testified that neither he nor any of his employees had had any prior background or association with Deering Milliken mills. Not for any lack of effort is the number shown so small. I have not overlooked, in the testimony concerning the functioning of the placement department, reference to mills' occasional inquiries whether other mills and available employees with certain qualifications. The significance and the results of such inquiries are presumably to be seen in the evidence of transfers or changes noted.

Another item which called for explanation and was explained is the statement in a letter from Oeland to Milliken on October 12, 1956, that D. M. I. E. D. "agrees to carry for a period of 3 months after their separation from the Darlington payroll" 16 office and supervisory personnel. It was testified that Lowry had said that he had work for them and that the mills which DMSC serviced would want any whom he could not hire since the mills were always looking for qualified people; and these were qualified Darlington personnel. (This was never effectuated; except for Goodwin, *infra*, the men got jobs elsewhere.) It

appears also that after it had been decided to liquidate Darlington several of its supervisors and staff employees were given time off to visit other mills, both Deering Milliken, and outside, to see whether they could get other jobs. As he testified concerning this, it did not appear that Deering Milliken mills stood out in Oeland's memory or that they were his special concern.

A single employer status would perhaps be characterized by a transferability of employees which does not exist here. Certainly the evidence adduced by the General Counsel in this connection does not show such status. Nor could an appropriate unit be found which would include employees of the various corporations who perform like or related tasks. There is no proof of a common labor force or a uniformly managed labor relations policy.

Memoranda prepared by DMSC which permitted comparison of the mills with respect to annual labor turnover could, like the demerit system employed, be examples and an incentive for improvement. Similar information was obtained from the National Industrial Conference Board and other patently independent sources, and it can no more be held that comparison with other Deering Milliken mills indicates single employer status among them than that comparison with other companies and other operations indicates single employer status with such others. Trade associations, whose members do not jointly occupy single employer status, prepare and distribute such information. Here again we have no evidence that DMSC or anyone else outside a given mill corporation "got after" the mill treasurer or otherwise exercised or attempted to exercise a measure of control. The mills received unemployment insurance memoranda from DMSC; they also received trade association and independent consultants' memoranda and bulletins. All were advisory, and the weight to be given them was determined at each mill for itself. General circularization

of all of the mills when only one mill treasurer sought information and whether or not the information was applicable to the other mills or was desired or used by their treasurers represented DMSC's own interest in such matters and its desire to be helpful. Trade associations act similarly.

Cooperation in changing employment and questions in that respect developed at various times. Of greater significance was the question of possible transfer of Darlington's supervisory personnel at the time of liquidation. Oeland made recommendations and Lowry indicated which men he thought would be useful, with the expectation that they might be picked up by other Deering Milliken mills or by DMSC. Some 10 or 12 men were listed but, except for Goodwin, who returned to DMSC, apparently none were picked up by the other mills or DMSC.

We need not undertake to prove a universal negative or the nonexistence of all conceivable factors whose existence would prove single employer status. But to the extent that certain factors have been pointed to as indicative of integration, such factors, as we have seen, can be cited and the finding made that they do not support the General Counsel's and the Union's position. Thus while a marked degree of interchange of employees between Darlington, Deering Milliken, and Deering Milliken mills would suggest integration and constitute a factor for finding single employer status, no evidence has been submitted of interchange beyond that which may well characterize cooperating but independent corporations. Clearly there is no established system here of a course of interchange of employees. The occasional hire by one corporation of an expert employee who had served one of the others does not even suggest single employer status. The situation is no more frequent here or probative than is a company's employment as officer or house counsel of an attorney who has previously served it as an independent practitioner or member of a law firm.

Leading to the subject of recruitment and training of employees, which we shall next consider, but also connected with the element of transferability of employees is a memorandum from Johnson, when he was head of DMSC's placement department, to Oeland. In this memorandum Johnson suggests the possibility of "borrowing" a trainee or part-time student from Pacolet, "sharing" a man with another mill, or of using someone from the IED or the Cotton Department "on a special assignment" basis. Whatever impression of close relationship is thus created is largely dissipated by Johnson's testimony, "They were just general suggestions of a line (of) approach"; that "employing" would be more accurate than "borrowing," and that he had not known of any such practice. Here again is an individual's impression of a relationship and his use of certain terms, without proof that the relationship in fact existed. (It must be noted that Johnson was suggesting; it was for Oeland to decide and act.)

Another memorandum from Johnson to Oeland, in March 1955, entitled "Supervisory and Trainee List," might well be included among those items which do suggest single employer status among the mills. Most of the memorandum might be considered to have been issued to obtain for DMSC's placement department more complete information so that it might be able to render better service to Darlington. But it sought, *inter alia*, information concerning "(n) on college supervisors at the level of overseer or higher who may advance within your mill, or are capable of assuming greater responsibilities in another D. M. unit." The memorandum declared the placement department's intention to prepare a list of certain personnel at all of the mills. It must be noted, on the other hand, that the possibility thus suggested of inter-mill transfers was not realized beyond the limited extent noted *supra*. Certainly here is no evidence of authority outside of any mill corporation to remove or other-

wise control the hire of any employee of that corporation. The services of the placement department, from the pre-interview stage through employee statistics, was advisory only. The mill treasurers decided whether to follow the advice and the extent to which the services were employed.

A Training Committee, which included several mill treasurers, the head of the Cotton Department, and the president of DMRC, was organized, and a proposed form of trainee agreement drafted which was sent to Deering Milliken mills in November 1955 with the request that they indicate whether they planned to use it. Some mills indicated an intention to pay trainees on an hourly basis; some, equivalent amounts as a monthly salary; and the rates were changed by various mills from time to time. Thereafter DMSC and Johnson particularly developed a program of interviewing college students and offered various suggestions, some of which were voluntarily adopted by some of the mills. Many of the suggestions were embodied in a formal training program which included job instructor training and job relations training. Without fully detailing the overall program, it will suffice to note that various mills then jointly, or singly on a reciprocal basis, sponsored meetings or dinners for potential recruits. There is no evidence that, in the exercise of these joint or reciprocal efforts, any mill deferred, voluntarily or otherwise, to the wishes of another. The mills were here as in other respects merely sharing expenses to accomplish what they could not separately manage.

To assist in making contacts at the various schools and getting better men as trainees, the placement department prepared a "College Recruiting Program" which suggested "points . . . to bring out when talking with the students."

The purpose here was to impress, and like the Fabric Magic book, *infra*, the overall organization was stressed. Under "Opportunities and Future," the following was sug-

gested as a point "to be brought out": "Man hired by one unit—not Deering Milliken—but is available to entire organization. Stress cross transfers mill to mill—staff to line, etc." Whether this suggestion was followed by mill representatives who met the students we do not know. The grandiose if hopeful aspect is clear in Johnson's testimony that the instruction that "(I)n no event should a man be invited to more than two of our mills for a job offer" was not observed. Johnson testified that it was up to the mill representatives to bring out what they wanted to bring out when they talked to the students. While the program and the suggestions made are evidence to be considered in determining the relationship between the various corporations, of greater weight are the facts concerning actual availability to the "entire organization" and "cross transfers" from mill to mill.

Nor, regardless of their number, are programs which are developed for submission and assistance to various companies indicative of single employer status among those companies which adopt or consider such programs. Thus, to cite one example, the American Management Association is currently sponsoring for various and unrelated companies a seminar on College Recruitment. That seminar, which is related to memoranda and certain activities described in this proceeding, refers *inter alia* to make-up of the recruiting team; examination of studies indicating work records of college students previously hired as basis for selecting current candidates; preliminary steps taken with college placement bureaus before interviews with potential employees; use of publicity; screening effectively before final job candidate selection; proper timing of interviewing trips; discussion of common errors from viewpoint of placement officer; what techniques are apt to work; preinduction and induction program of college graduates into company; continuing relationship between college and companies, etc.

The apparent complexity of this single nonmanufacturing, albeit important, item indicates the wisdom of a joinder[26] of efforts and of assignment to specialists.[27] But such joinder was without loss of authority to the representative mills; and the assignment did not transfer control. These are consonant with full independence of the respective companies. Except where a treasurer was acting for his own mill, not only were the recruiters limited to making recommendations to the mills, but their continued service was at the mills' pleasure. Experience in the industry must bring an awareness of similar complexities in many respects, and may lead to reference to specialists for advice: all without surrender of control and without creating a single employer status among the companies which thus call for an even pool their efforts to obtain assistance and advice.

Similarly with respect to advice concerning purchase of supplies and equipment and by Roger Milliken generally, if the latter or others, because of their experience and contacts in the industry, could offer suggestions to the mills, those suggestions provided the mills with opportunities for benefit at their own discretion. A delivery schedule prepared by DMSC's purchasing department and received in evidence was based on dates requested by the mills. The decision was not the purchasing department's and the mills could make revisions subject of course to the seller's agreement. In another memorandum from the purchasing department it is clear that its services are advisory only: although it concerned a technical problem, the decision ultimately lay with the mills, one of which had already decided on contrary action. Whatever the purchasing department's advice, it is

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[26]See "the Jointly Owned Subsidiary," Harvard Business Review, Vol. 37, No. 4 (July-August 1959), page 31, *et seq.*

[27]Whether or not "Macy tells Gimbel," independent business organizations (certainly independent for our purpose, of which more *infra*) do cooperate for mutual benefit; not only among rival athletic coaches are seminars conducted.

clear that there is no uniformity among the mills in the equipment and supplies used. It should also be noted that the testimony concerning activities of DMSC's purchasing department relates almost without exception to the mills. Deering Milliken has its own purchasing department.

On a different level, that of the production superintendents, the production superintendent of one mill inquired of his counterpart at another concerning some phase of plant supervision, did this reflect a spirit of helpfulness which might be reciprocated, camaraderie, or integration? What if personnel managers exchanged information, most of which would be commonplace at a convention of personnel managers or management experts so-called or a luncheon discussion among representatives of independent companies? Mill treasurers had similar meetings and discussions and exchanged memoranda; for more formal and technical advice a treasurer sometimes looked to outside consultants, whom he had to pay. Oeland also testified that he visited non-Deering Milliken mills and bleacheries from time to time, and he named more than a dozen such. Here presumably were other instances of cooperation, the extent and details of which were not spread upon the record.

From testimony that some of Darlington's supplies were sold to other Deering Milliken mills prior to the auction sale, one could jump to the conclusion that Darlington's assets on liquidation, or some of them, were sacrificed to other Deering Milliken mills; and on the next landing conclude that a single employer relationship therefore existed. But it appears that such supplies, returned to the makers or sold to other Deering Milliken mills where possible, brought about 80 percent of cost while approximately 20 percent was realized on similar supplies sold at the auction. Similar advantage accrued to Darlington from sale of cotton which it owned to other Deering Milliken mills after Truluck (*infra*) had attempted to dispose of it elsewhere.

It is true that, like others, the recruitment program as described in this proceeding was limited to Deering Milliken mills and was availed of by only some of them. But this reflects recognition of similarity of problems and the extent of cooperation among these companies in other respects. Cooperation is still cooperation even though it be limited as to the number cooperating (just as it remains cooperation even if certain steps in programming, manufacture, sales, and especially the decisional process are not included in the joint efforts). There is no evidence of compulsion on the mills to join in these programs. But had they attempted to do their own recruiting, training, testing, etc., the results would have been regressive and markedly limited. The General Counsel recognized this when he argued that, like Deering Milliken, DMSC provides "top flight specialists that the mills themselves, if they were completely independent, could not afford." His five word qualification is quite unnecessary since the mills' ability to enlist specialists cooperatively would in no wise be limited were they admittedly independent. We have in this argument an instance of what has already been pointed out as typical of the evidence received: that conditions are cited which are consistent with but not probative of single employer status.

Conceivably one of the mills might at some time prefer not to share with another certain information which it obtained in one of these joint programs. That, however, could only be at the price of developing the program without joint effort and support, which would be expensive and therefore impractical. But a practical limitation in the number of cooperating mills having been found, it is quite understandable that these mills preferred to limit that cooperation and exclude others. Mutual benefits thus accruing to Deering Milliken mills might constitute an incentive to continue their joint efforts; they do not prove single

employer status, control, or any element beyond voluntary cooperation.

Thus the New York Stock Exchange may counsel its members and advertise their services, and at the same time neither counsel nor advertise nonmembers. Membership there even provides a measure of control. Yet such assistance and control and the exclusion[28] of nonmembers therefrom do not create a single employer status. As much can be noted with respect to local unions, their so-called parent bodies, and their federations.

The various memoranda concerning recruitment and training, and the arrangements made indicate a wholly voluntary relationship among DMSC, DMRC, and the mills which joined in these plans. The breadth of recommendations by DMSC is not determinative of status; the area of actual cooperation among the mills was much narrower, and superimposed control nonexistent. Significantly, individual mill treasurers made their own selections among available recruits. Nor is the extent of cooperation shown so great as to warrant a finding that, however voluntary their acts, the corporations were in fact operated as a single entity. It should be added that, if the cooperation shown does not prove single employer status, certainly reference to such cooperation my memoranda to the various mills or to DMSC or DMRC, with copies to the mills, proves no more.

We have already noted the voluntary aspect when mills adopted suggestions which they received. Even if we were to ignore that aspect, do suggestions and recommendations by Deering Milliken to the various mills and adopted by the latter prove control and single employer status? What of the recommendations which were rejected?

Deering Milliken's quality control department, established in 1950, naturally sought to anticipate or avoid com-

[28]There is testimony that IED representatives of DMSC visited other mills for information, as an example of a wider area of cooperation.

plaints with respect to some of the finished products of the mills. Thus Darlington adopted "truth marks" (apparently common in the industry) so that material could be identified as to origin. To a great extent the quality control department functioned as the complaint adjustment department: Shotwell, who was in charge of quality control for Deering Milliken, tested material on a customer's complaint and then made a recommendation to the mill for settlement; but the decision with respect to settlement, whether or not to make an allowance to the customer, was the mill treasurer's. The credit and complaint adjustment services rendering by Deering Milliken to Darlington are not unusual procedures for factors or even independent sales organizations. Such services are quite understandable if only as designed to protect the agents' investment. If a single employer status existed, where outside of Darlington did control lie? To try to satisfy customers is good business practice. As much can be said for taking expert advice. There is no evidence that Deering Milliken determined Darlington's decisions in these respects. The record shows that at times mill treasurers did not accept the recommendaions made to them for resolving differences with customers, but settled on a different basis.

Thus with respect to customers' complaints concerning tar spots, each dispute was handled on its merits and by the mill treasurer involved. As in other matters, uniformity in handling would not prove single employer status: it might reflect independent decisions and agreement that certain methods are best. But the absence of uniformity suggests independence. Although the General Counsel argues that the significant fact here was that Deering Milliken was trying to establish a general policy for the mills, and that whether such a policy was established is unimportant, failure in such an attempt negates the concept of control; while the attempt signifies no more than a desire for proper

handling of complaints of all customers to whom Deering Milliken sold as sales agent. It is no reflection on Deering Milliken and no evidence of single employer status that, as the General Counsel declares, it "felt strongly about its position in the market and its reputation with customers." Such a "general policy," explains action taken as that which a responsible independent sales agent would take.

Standard Practice Instructions, prepared in the Controller's office of Deering Milliken and distributed at Deering Milliken and among the mills, might be regarded from their very title as indicative of control by Deering Milliken over the mills. But the testimony indicates that these are not instructions directed out of New York and to the mills. Rather, they are prepared from information received from the mills, and represent Controller Flanigan's understanding of what the mills have decided to do. Thus they constitute a confirmation and a handy and succinct reference guide for the mills, and at the same time information and a guide to interested Deering Milliken employees. What may suggest single employer status in fact here indicates independence. The Standard Practice Instruction referred to *supra* was thus explained.

To expedite resolution of disputes on long overdue payments, Flanigan sent a memorandum to mill office managers in which he suggested bookkeeping procedural changes and a procedure which it was hoped would move the mills to resolve such disputes more promptly. The factor's interest here would be evident. While the procedure involved a charge-back against the mill, the latter on settlement of the dispute received credit retroactively; and this procedure, it was testified, is common whether or not the factor owns stock in the mill. Deering Milliken pressed for early settlement of such disputes, but it does not appear that such settlement, sometimes by arbitration, was handled or determined by Deering Milliken.

A memorandum in March 1957, after the plant had been sold, from Flanigan to Oeland concerning assistance by the former in obtaining a reduction in a bill rendered to Darlington by a firm of accountants has been cited as proof of the status claimed by the General Counsel and the Union, and has been countered with the argument that it cannot show single employer status in 1956. While subsequent events do not prove earlier status, a later relationship may, on the presumption of continuity, suggest that the relationship existed before, in this case at and prior to the time of liquidation. But the later event noted indicates only assistance by Flanigan scarcely different from that which has already been noted and is far short of proof of single employer status.

In connection with the Deering Milliken Retirement Plan mentioned supra, a memorandum from Kable to Oeland refers to a recommended amendment to the Plan, and declares: "Please place this proposed resolution on the agenda of the next meeting of the Board of Directors of your corporation." If this last gives any impression that Kable was directing Darlington's action, it is quickly dispelled by the testimony that mill treasurers are themselves members of the Pension Committee which recommended the resolution; Kable was intermediary between them and the tax attorneys who prepared the resolution; and only after such resolutions were adopted by the mill's Board of Director (he did not "anticipate" such action) would Kable advise how many copies should be signed, etc. Here again a possible impression of control by Deering Milliken vanishes with evidence of independent decisions by the mills.

Let us turn now, to evidence which more nearly suggests a single employer status. (Opinions will of course differ as to the existence or extent of any such suggestion. Whatever disagreement may follow my selections from the record, I shall not aggravate it by attempting to correlate

importance with order or sequence.) In June 1956, Nielson, Pacolet's office manager, suggested to Flanigan that a new category be included in the mills' financial statement, and detailed his reasons therefor. Flanigan promptly forwarded the memorandum to Oeland at Darlington.

Nielson's reference to employment at various Deering Milliken mills and his suggestion that all mills be "consistent" would be characteristic of a single employer setup. But it must then be noticed that, in Nielson's words, "the accounting policy as far as what particular category of labor to charge them to varies drastically between mills." Here is apparent recognition that freedom of action existed. This is confirmed by Nielson's further statement, "We do not feel that we should go ahead with this, however, without all mills being consistent," in view of certain comparisons made between or among mills. Apparently Pacolet was free to "go ahead" but preferred not to for the reason stated. Nielson concludes with a request for Flanigan's comments and a check among other mills to see whether they are in agreement. This last, indicating the mills' independence, is underscored in a covering memorandum to Oeland, which Flanigan closes as follows: "If you are in favor of adding this category in your mill, we would appreciate hearing from you."

Reference by a mill office manager to employment and accounting policy at the various mills, his call for consistency, and the transmittal to Deering Milliken and then to Darlington—all of these gain our attention in this examination for evidence of single employer status. But the memoranda themselves indicate the voluntary aspects for Pacolet, Darlington, and the other companies. Pacolet's office manager may desire an integrated accounting system; someone else may propose an integrated noncompetitive manufacturing system. But adoption of these suggestions, much less their imposition, has not yet been evidenced.

The suggestion from Nielson to Oeland through Deering Milliken might represent the approach from one independent company to another through their mutual factor, or contrariwise an integrated relationship working "through channels." On the other hand, yet similarly, a direct suggestion from Nielson to Oeland might reflect a close working relationship which in turn might indicate either no more than such a relationship between independent companies or an integrated status. As if the absence of probative value in this either-or aspect of the evidence were not sufficient to show that it proves nothing, one can speculate on the extent to which protocol required that the office manager of one company should not directly approach the treasurer of another, even if this was at times done; whether contact could have been made through the Pacolet treasurer; and finally, what if any significance for us would have attached to any other procedure.

Again, in a long list of suggestions to assist the mills in their training program, Johnson makes reference to "transfers" and suggests that his IED employ a trainee for 6 months with the mill footing the bill. We have already considered the element of transferability and seen that Johnson used terms which, by his own explanation and from actual events, were inexact. No more than in the instance where Pacolet's office manager hoped for consistency in the mills' accounting do Johnson's ingenuity and thoroughness in distributing many suggestions which in fact he received from various mills prove a relation which did not actually exist. Further, the suggestion that a mill pay the salary of a trainee at DMSC's IED would not prove control or single employer status; nor does it appear to have been adopted. The General Counsel at the hearing called attention to 18 of the 40 suggestions listed by Johnson in a memorandum. I have examined all of these.

Oeland testified that the accounts at Monarch, where he had formerly been employed, had been in different form

from those which Darlington kept; but that all followed good accounting practice, and there were similarities, as in accruing expected expenses at the end of the accounting year; no routine had been established for the various corporations. Good judgment and business practice are not to be sacrificed merely to be different. Similarities may be fortuitous or the product of independent judgment or cooperation. We are still concerned with the question of control or that element of cooperation which belies independence. Certainly that Oeland "did draw on (his) accounting experience at Monarch in helping to set up" Darlington's accounts is neither surprising nor probative of anything here.

The General Counsel has also cited a memorandum from the office of Deering Milliken's Controller to Darlington's accountant, in which suggestions are made for changes in the financial statement forms. But any impression of dictation or central must be quickly dispelled as it becomes clear that this is but one instance of suggesting to the mills a helpful idea already adopted by one of them or suggested by some individual. This memorandum specifically poses the questions without making any decisions thereon. Minot Milliken testified frankly that copies of financial forms were sent by the mills to Deering Milliken as it was important that the mills' balance sheet items be known to it; Deering Milliken submits similar information to banks when it borrows from them.

The issue of extent of assistance as reflecting on the relationship of the various companies is raised by Deering Milliken's employment of Turnowski under Flanigan and Kable for a short time. It was explained that he worked on property accounts for proper handling taxwise of purchases of new machinery, consulting with mill treasurers as they attempted to modernize their facilities after World War II. The mills' property accounts were independently maintained at the respective mills, and Deering Milliken's treasurer, Minot Milliken, had no knowledge of them. But for a time Roger Milliken's interest in the mills was expressed

in the employment of Turnowski by Deering Milliken! This was Minot Milliken's explanation for Turnowski's employment. Although a small matter in itself, the possible significance of this temporary employment and the explanation given constitute in my eyes a challenge to my findings and conclusions herein. One could perhaps pass this item off as evidence of Deering Milliken's further interest in its principal mills' welfare instead of combining Roger Milliken's personal interest with this employment by Deering Milliken as Minot Milliken has. The situation can be viewed in a light more favorable to the Respondents if we recognize any factor's interest in the well-being of its clients and regard Turnowski's assistance as similar to the other tax assistance and that given in connection with production, sales, insurance, etc. That Turnowski's services were advisory rather than controlling is further suggested by the testimony that he did not have copies or summations of Darlington's property records.

As an exception to the time-spent basis for payment by the mills to DMSC for services which it rendered to them, the head of its cotton purchasing department, Truluck, received payment from each mill as a percentage of its production, such payments going through DMSC. (DMSC also purchases synthetic yarn for mills which use it.) This arrangement, entered into at different times with the several mills, whereby they pooled their buying of cotton so as to avail themselves of an expert in the field and carload freight rates, was voluntary on their part and does not appear to have barred them from freely purchasing elsewhere and under other arrangements. Although the cotton purchasing department could be and apparently was very helpful in buying for and advising the mills, neither Deering Milliken, DMSC, nor Truluck exercised control over the mills in this respect. The record includes evidence that cotton purchasers render similar cotton purchasing and related services to admittedly independent mills.

There are other instances in which a factor purchases cotton for mills in which it holds a stock interest and also for mills which are independent in ownership. Thus cotton purchasing arrangements do not tend to show either independent or single employer status. Nor is division of a limited quantity of a given quality among several mills which had ordered it significant: any purchasing agent, ethical and concerned with pleasing his principals, would do likewise. Further, with fluctuations in the cotton market, hedging by transactions in futures is common. The evidence indicates that the extent of such hedging here is determined by the respective mill treasurers and varies among the various corporations.

In connection with the erection of a central cotton warehouse originally planned to accommodate five mills which are within a 100-mile radius, it was noted that a DMSCIED memorandum first cites the savings contemplated for each of these mills, including Darlington, and then lists the total net savings to *all* of the mills expected to join in the project and the return on investment, again computed for all rather than for each mill. The suspicious circumstances here is the grouping of all of the mills. The savings to the respective mills would be considered by *each* of them were they indeed independent. In a case of overall control and single employer status, the total net savings and the return of the entire investment would take priority; and these letters items in the memorandum suggest that single employer type of consideration here. But (with the exception of Pacolet) the investment by each mill in the warehouse was in proportion to the quantity of cotton consumed by it so that with minor variations (some of the figures used were themselves estimates) the return on investment for all was and would be the same as the return on investment for each mill. Thus there is no lack of concern for the benefit to each participant but only a single overall computation which was

referable to each. This does not indicate single employer status, whatever the impression. (As in other instances, we must distinguish between a *prima facie* impression which may warrant further examination or questioning, and a finding when the facts are understood.) On the contrary there is one facet here which further suggests independence: Pacolet's treasurer "elected" to join this venture to the extent of only 5 percent of his cotton consumption.

Among the services rendered by Deering Milliken were those performed by its tax department, which Kable supervises. That department is responsible for the drafting and preparation of Federal and State income and other tax returns for Deering Milliken, and its services are also available to all mills which sell through Deering Milliken. The department's services are charged to the mills according to weighted hours spent, weighting being according to the salary of the person whose time is thus spent. It was in this connection Kable was made an assistant secretary or treasurer of the various mill companies; that status earned him no addition compensation, and he had no authority except to settle tax disputes with the consent of the mill treasurer. In effect his title afforded him recognition as he dealt on behalf of the mills with various tax authorities.

Kable had a $2,000 coverage in Darlington's group life policy and similar coverage with the other mills of which he was thus assistant treasurer or secretary. This was the maximum amount that any individual could carry under each policy, and all of the companies' plans were with one insurer, although separate. Here was an attribute of employment of Kable by each of the mills. But whatever the insurer's attitude, it is clear that Kable was not a mill employee. The mills could and did avail themselves of his services, for which they paid Deering Milliken; and while each mill could terminate his services for itself, they could not terminate his employment by Deering Milliken. Cer-

tainly the fact that he gave tax and other financial advice to Darlington does not prove single employer status between the latter and Deering Milliken. Tax counsel were called in from time to time and their advice transmitted to Darlington and other mills. Similarly the Darlington stockholders, through Oeland, selected an "outside" auditor from time to time. But neither tax counsel nor the auditor, despite the joint efforts thus made, was a Darlington employee; nor did the efforts of either create a single employer status. While Kable's efforts on behalf of the various mills are detailed and include lengthy discussions with tax officials, decision after his negotiations is in each case made by the mill treasurer. This is consonant with either independent or employee status; it would exist were there a single employer relationship among these companies, but it is not limited to and does not prove such a relationship or status. It may be well to recall at this point that, although Pacolet discussed tax aspects of its vacation plan with Kable, it sought advice from tax attorneys.

Presumably significance is claimed in the fact that Kable prepared in final form the minutes of stockholders and directors meetings to the extent that they referred to action taken which had a bearing on tax. But Oeland would first send to Kable a draft of such minutes after the action had been taken. Here again as in other matters the decision was made at and by the mill, Kable advised and otherwise assisted. (What is here said concerning Kable applies on a very small scale to barely mentioned advice by Kennedy, Deering Milliken's general counsel, with respect to an item in the minutes of a directors meeting. It appears to be Kennedy's function to have independent counsel prepare necessary documents for mill corporations, which he then passes on to the respective mills. Darlington's general corporate legal problems were handled by local attorneys in Darlington. Not in criticism of the General Counsel, but

as a reflection on the available proof, it may be said that the reference to this item constitutes straining at a gnat when there is no camel to swallow.) Considering the services performed by the tax department, no significance would attach to its possession of a copy of Darlington's by-laws. But some slight significance may be found in the fact that, as the Darlington liquidation developed, Kable noted that he did not have a copy of its by-laws, which he would need as tax problems arose. In January 1957 he asked the various mills to send him a copy of their by-laws. One would expect copies to have been maintained at the seat of government were this an "empire."

In more general terms, Deering Milliken interested itself in Darlington's taxes and year end dividends, as indicated in a request by Minot Milliken in September 1955 for Darlington's estimate of profits for that year so that a tax attorney might review it to determine Darlington's year-end dividend. Deering Milliken rendered a service in securing the advice of tax attorneys (who might not have been readily available to the individual corporations) for the mills, but did not itself become involved in any sense of control of dividend declarations. Nor did the attorneys, advising Deering Milliken mills and acting at their request, create a single employer status among them any more than such status could be held to include other clients of those attorneys.

Of similar importance to the factor are other financial details, including capital expenditures and commitments, depreciation, etc., and the amount available for additional capital expenditures or investment in modernization. But interest in these items does not prove control over decisions made or to be made with respect to such expenditures, and certainly not with respect to labor relations and policies. To the extent that it is prepared to help, a factor's or sales agent's interests lie with its principal's benefits.

If what is good for General Motors be deemed good for the United Sttaes, and what is good for Darlington be deemed good for Deering Milliken, such concurrence of benefit even if planned does not prove control or single employer status within the respective groups. (Any attempt to inject a political issue here is rejected.)

A related situation with respect to Deering Milliken Research Corporation was noted at the hearing. Organized on a cooperative basis in 1945, DMRC had been allowed only an 80 percent deduction by the federal Treasury Department. A new and more advantageous plan was then worked out by Kable and tax counsel, and submitted to and approved by Darlington's stockholders in January 1955. There is nothing significant to us in the fact that Kable explained to Oeland the details of the transfer of the certificates which was to be made and the sums involved. Similarly, when Darlington was liquidated, Oeland consulted Kable concerning the mechanics of redeeming Darlington's stock in DMRC.

Considering Kable's services to Darlington and the other mill companies, we are not warranted in finding integrated status because a consultant is employed over a period of time rather than *ad hoc*. It is clear from the evidence that these were consultant or advisory services without that element of control or dominance over decisions which would characterize a single employer status involving both the source of the expert assistance and the Company thus assisted.

Having referred to DMRC, we can at this time briefly note the testimony concerning its efforts in connection with the incoming parts inspection and maintenance and preventive maintenance programs of the various mills, together with a limited machinery purchase effort availed of by some of them. While anything done at a mill may impinge on the terms and conditions of employment, this work was not

so much in connection with labor relations or the terms and conditions of employment as with the industrial engineering of jobs and work procedure. With respect to each facet of the assistance and suggestions offered by DMRC, it was necessary to convince the mill treasurers even as the latter is the first place determined the activities to be considered by DMRC.

Payment to DMRC for its services according to sale or commission income, is entirely consonant with independent status. Where a given activity was of interest to only one mill, the charge therefor was made to that mill only, although such arrangements appeared to be loose. Comparison and even competition among the mills, with a demerit-ing system based on the condition of the machinery—all of this represents joint effort independently agreed to for mutual benefit. In one case, it was brought out, Oeland stated that he did not want the figures let out to other mills; McCullough, who was secretary of DMRC and was intimately involved in these programs, testified that he had to honor Oeland's request. With respect to a slubbing device which it owned and which DMRC had developed and sold to it, Oeland stated that Darlington preferred not to auction it off at the sale, and suggested that DMRC purchase it after agreement on the price. The inference that this meant a preference for other mills which maintained or contributed to DMRC is not warranted; in a letter 7 months before, Oeland mentioned Darlington's trial shipment of the device for sale to Burlington Mills, an "outside" organization.

In response to a request by Roger Milliken for a recommendation on the best methods for certain operation, DMRC replied that it had been working on a plan so that it could report to "mill management" on mill practices as well as machinery condition. The mill treasurers were of course interested in assistance. But it was testified that

they were sensitive about their mill practices. It does not appear that Milliken or DMRC could or ever did force on mill treasurers any changes in practice or operation. In fact the rating of the mills' maintenance systems was soon discontinued when the treasurers decided that it was not sufficiently meaningful to warrant consideration at their quarterly meetings.

Another and more serious question is raised by an agreement to make retirement or pension payments to Nicholson, who had preceded Oeland as treasurer of Darlington. On Nicholson's retirement in 1951, the directors of Darlington committed themselves to make monthly payments to him. With the dissolution of Darlington this commitment continued, but Darlington's obligation was measured by actuarial computations. The question arose as to what would happen if Nicholson outlived the actuaries' expectation. At this point Milliken suggested that Cotwool, another "related" corporation, pick up any payments which might be due to Nicholson should he outlive the actuaries' expectation. The director of Cotwool agreed to do this. In explanation it was pointed out at the hearing that Nicholson had at one time been employed by a subsidiary of Cotwool. Whether this last appeared to the Cotwool directors to create a moral obligation to assume the possible future payments, and if they thereupon committed themselves, the commitment is clear. This item does not show control of one corporation by another; but the element of cooperation is close and is related to the status of a former employee, albeit a top one and not an employee within the meaning of the Act. (The reference here is to the element of centralized control of labor relations.) This is certainly one of the General Counsel's "stronger" instances. That it is not probative reflects on or is itself a reflection of the nature of his case. An attempt to show further connection between Nicholson and Deering Milliken or these mills failed.

Reference was early made to the Deering Milliken Foundation, formerly the Deering Milliken Welfare Fund. This was organized for charitable purposes; Darlington and other corporations and individuals have contributed to it voluntarily. Once received, the funds are administered by a bank as trustee on recommendation of an advisory committee. The control thus exercised by the advisory committee and the bank, and the loss of control by Darlington and other contributors over funds once turned over to the Foundation do not indicate any measure of control by one corporation over another, or by or over any individual. Whatever goodwill or other benefits attach to the name Deering Milliken from use of this plan which also provides tax benefits, any consequent impression of control over contributors is erroneous.

The General Counsel has also cited a statement by Roger Milliken on tober 2, 1956, which was received in evidence at the original hearing on the issue of Darlington's business prospects. That statement, posted at Darlington and some of the other Deering Milliken mills, was as follows:

> The Administration in Washington has not yet worked out the details of a positive or permanent solution to the problem of low cost Japanese imports competition. But in a speech last weekend, Sherman Adams, speaking for the Administration, promised that they were committed to work out a solution of this problem that would be satisfactory to the American textile industry, and would stop the liquidation of American jobs and American mills that has been taking place.
>
> Relying on this promise, without which a wage increase would be impossible, we hereby announce an upward revision of wages, effective Oct. 8.

The statement is material here as it may indicate a common wage policy among the mills and control of such policy.

On the other hand, if a quondam leading government official's remarks prompted action in Deering Milliken and non-Deering Milliken mills, announcement of such action by the president of various mill corporations here no more proves that such corporations occupy a single employer status either among themselves or with their factor and sales agent than that they occupy such status with other corporations in the industry which announced similar action; no more than, where there is an industry-wide association, does such an announcement by the association indicate a single employer status among its members. Neither would the fact that the action in putting increases into effect, as distinguished from the announcement, was simultaneous and similar (if the increases were simultaneous and similar) indicate single employer status or control. The increase, not the announcement, was the salient fact; and that was determined throughout the industry by a long existing demand for higher wages and the prospects raised by the government official's remarks (and other general as well as specific factors). It is argued that an outstanding aspect of a common wage or labor relations policy among the mills (this must exclude Deering Milliken, DMSC, and DMRC) is the fact that the employees are not unionized; but this proves too much since it typifies many other cotton mills.

Close operation among the various Deering Milliken mills is further exemplified by a memorandum entitled "Cotton Spindle Activity," from Flanagan to the various mills in March 1956. This referred to a chart showing such activity for Deering Milliken mills and throughout the industry from 1941 through 1954, and then through 1955. Prepared by Deering Milliken, it was regarded as a selling argument to stimulate future activity and to boost sales. Were claims of successful operation and multiplied sales to be regarded as evidence of single employer status, the Board would have to modify its findings and its orders in countless cases. (See *infra.*)

Also cited as indicative of single employer status is a "unanimous" decision reached at a weekly meeting of Deering Milliken salesmen on June 9, 1955, and before the mills were consulted, not to confine a given blend to one customer. This decision was evidently deemed by all who considered the matter to be in the best interest of Deering Milliken and, presumably for the same reason, of the mill. Certainly it is not claimed that the salesmen controlled the mills; yet the language here is that they decided, Milliken agreeing. One can think of the admonition against "all eggs in one basket" and of the desire to maintain goodwill with all accounts. The salesman's interest would thus generally follow that of the manufacturer. That interests coincide does not prove single employer status. The action taken does not show such control by one corporation over the other as to indicate single employer status: such a decision by Deering Milliken and its sales force might well be made with the corporations occupying a multiple employer status and even if there were no common stock ownership. Nor would a sales organization's decision made without consulting its manufacturer and even contrary to the latter's interest prove single employer status. Should we then hold that, because the interests are parallel and the decision favors both, single employer status is indicated? Sales and style information is suggestive not of domination or control but of an advisory service to protect advanced funds and to further sales. Such fund advancement is characteristic of independent factors who, even if there has been no Board determination of the issue, can by no stretch of the imagination or the law properly be held to constitute a single employer with their clients.

As for the statement, in another weekly resume of a sales meeting, "We would like to make a decision as to whether we will put looms on (one or a second construction) sometime today. Please everyone contact all your customers who might have interest in this number"—to cite this is to grasp

at straws. The reference immediately before was to the "situation at Darlington" and some inquiries concerning a given construction, on which Sales Supervisor Miller had "obtained prices from Mr. Oeland." It is understandable that Miller, to his salesmen, would identify himself with Darlington in the decision to put looms on certain constructions after the salesmen reported on sales possibilities. But as Oeland set the price on the basis of various factors including market information from the sales force, so did he make the decision whether to manufacture various constructions. To conclude that these decisions were Deering Milliken's or those of its sales force would be to distort the evidence.

In December 1954 DMSC had suggested a program for customer visits to the mills. This suggestion appears to have been followed up in January 1955, when Dillard, who was at that time vice president in charge of certain sales and who was succeeded by May, notified Oeland of a plan to set up a room at Monarch mills to display finished and greige goods from various Deering Milliken mills. Monarch apparently did display some samples from some other mills. This seemingly close relationship between the mills was explained by an item in the memorandum suggesting the program, which called for an "offer of liaison" between Deering Milliken as selling organization and the various customer staff departments "to improve competitive position of both." The impulse to jump to the conclusion that Monarch was pushing sales of the other mills as in a single employer situation is thus replaced by the realization that Deering Milliken and the various mills including Monarch believed that there was an advantage to all in advertising the idea that "you can get th m all at Milliken," noted *infra*. The testimony concerning display of samples at Monarch is sketchy, and it does not appear that Monarch showed any other mill's construction which was competitive with its own. The evidence throughout shows that any all-for-one

concept was limited to what was favorable to the one; and that is a far cry from all *in* one.

It was explained that assistance in development of new fabrics is a sales function. This might be called a "Western Electric" type function, of which more *infra.* (We have already noted that there was competition among the mills in the manufacture and sale of similar constructions.) Here is another instance of mutual or concomitant benefit: as Minot Milliken voluntarily summarized when asked generally about other assistance, a very close relationship exists between mill treasurers and Deering Milliken sales departments, there being an almost constant and daily flow of information back and forth in the interest of further sales. But the nature of this relationship is clear: Although May, Deering Milliken's vice president in charge of these sales pressed Oeland to accept orders so that sales could be made, the latter considered the aspect of profits for Darlington's stockholders, with the result that offers were sometimes turned down and sales "lost." Here, as in decisions to limit operations, Oeland's authority was clear.

A Market Summary from Miller, as sales supervisor, to Oeland in April 1956 is pointed to as indicating control of Darlington's output by the other mills or by Deering Milliken. The report reads in part as follows:

> We understand that this is a very good running number at the mill and that you would be glad to have additional business on the cloth. If we can arrange to get clearance from Department 2 and operate in a sensible way in relation to the other pocketing twills being made by the other mills, we will press for additional business.

Miller testified in explanation that "clearance" was a poor word; what he wanted from Department 2, which handled heavy goods, was market information concerning pocketing twills; such twills, used in great volume, are normally heavy

but Darlington had been able to make and obtain an order for a lighter twill; Miller now wanted market information concerning the traditional pocketing twills as he sought to avoid pushing a poorer quality and developing what might be a short-lived business. As thus explained, Darlington's sales were not limited by consideration of the effect on other mills or of other elements entraneous to Darlington's own welfare. This explanation is suspect if only because "clearance" suggests authority or control. Yet, with an order already accepted by Darlington, action had been taken without actual clearance.[29] As for the procedure in actually closing orders, price lists on the various constructions are periodically given to the salesmen as a guide. A salesman can quote a tentative price to a customer, who then makes a firm bid which is ultimately referred to the mill for acceptance. The General Counsel understandably emphasizes this exhibit in his brief. But he proceeds to stress the "numerous evidences of cooperation" between the mills, which is quite different from the necessary element of control.

Further on the question of terminology and the employment of right or wrong words, use of "we" by Milliken in memorandums to various mill treasurers is cited as indicating single or joint control. (Whether the control thus allegedly indicated is claimed to be by Milliken, Deering Milliken, or both is not always clear.) Whether this be regarded as another incorrect term or whatever the explanation, the fact is that in each case actual control lay with the mill. Thus Milliken wrote to treasurers, ". . . we are planning to install a great deal of Pneumafil equipment," as he proceeded to transmit a suggestion which a mill treasurer had made concerning such installations. Leaving for the moment the aspect of cooperation in engineering, it is

[29] Cf. *Sweet Home Veneer, Inc.*, 124 NLRB No. 17, where it was held that "propaganda" referred to by the employer did not mean union propaganda.

clear that the "we" is not Milliken or Deering Milliken in an overall plan for the installation at all mills; the decision in each case rested with the mill. It was only the planning which had elements of joint effort and cooperation, and in that sense it was quite correct to speak in the first person plural.

A similar first impression of control, which analysis proves to be only cooperation appears in the very next exhibit received, a memorandum to some mill treasurers which refers to capital expenditures for other equipment, asks for a study and report by the treasurers, and states, ". . . we will review the situation for the whole organization" in the hope of obtaining a more advantageous price with some equipment supplier. The term "review" may suggest control and single entity; and this is bolstered by "we" and "the whole organization." But all that we have here is a proposal for joint or simultaneous purchase after separate authorization by each mill. As for attaching significance to the word "organization," what shall we say when reference is made to the plural, "organizations"?

One admittedly independent company, Liberty Mutual Insurance Company, cooperates to the extent that it is called upon and can cooperate with Deering Milliken and these mills. But this does not bring that company within a single employer status with the others. It cannot be denied that the various corporations referred to in the remand order cooperate with one another to a great extent. But no more in their production and attempts to improve it than in their sales do I find that joint or superimposed control which is necessary to a conclusion that they occupy single employer status. To borrow terms used by counsel for the Union, interrelationship is shown, but not interdependence, and certainly not control.

Not clearly explained are certain references to Accident Prevention Procedure. A book so entitled was prepared

by the insurer, and certain procedures therein were stamped as approved by Lowry on behalf of "Deering, Milliken and Company Industrial Engineering Department." Such a stamp in use before DMSC was formed in 1951 does not show that any different services were rendered to the mills at that time or that the relationship among them and Deering Milliken was different from that under DMSC. Insofar as Lowry's efforts since 1951 are concerned, we have here only another example of assistance by DMSC to the mills, which pooled their accident insurance to obtain just such assistance and lower premiums while at the same time trying to lower their accident rates. Use after 1951, of the stamp described has not been explained. But, it is clear from the testimony that Deering Milliken does not have an industrial engineering department; DMSC does. Despite the rubber stamp, approval had apparently been given by Lowry on behalf of DMSC or DMSCIED. (Even after this was pointed out and while a witness referred to "the Industrial Engineering Department of the Service Corporation," the General Counsel and the Trial Examiner quite unintentionally continued to speak of DMIED." Complete forgiveness will surely be vouchsafed if it be pointed out that the witness, in a memorandum headed "Deering Milliken Service Corporation Placement Department," which department was part of that corporation's IED, himself referred to DMIED!) Nor are the facts altered by Oeland's reference to "DMIED" in a letter to Roger Milliken, as in one to Stallworth, both already noted.

These are not the only instances of reference to DMIED. But before we lose ourselves in a tangential flight or spacial orbit, it should be noted that, whether DMIED or DMSCIED, no control over the mills is here shown. Whatever the title mistakenly used and the form, the advisory nature of Lowry's efforts was made very clear as he testified that he was only slowly and partially suc-

cessful in persuading the mills to install an engineered standard cost system. His assistance was available to Darlington and other mills as and when they desired and developed a cost engineered system tailored to their respective organization and operations; and when mills so desired, they retained other industrial engineers as consultants.

As for the mills' pooling of their insurance, reliance on Deering Milliken's insurance administrator and joinder to obtain favorable fire, accident, workmen's compensation, or other insurance rates does not even remotely suggest the elements of control which indicate single employer status. (Our brief consideration of Accident Prevention Procedure suggests advantage to the insurer, which favors such joinder.) Neither does joint treatment by the insurer indicate such status any more than separate treatment by tax authorities indicates separate status. The advantages in an overall policy apparently do not extend to group life and hospitalization insurance, and benefits under different policies have varied from mill to mill.[30] One may wonder about the element of free service or benefits rendered Darlington by Deering Milliken in an inclusive air insurance policy; also about the fact that the mills are not charged for the services of the insurance department, which consists of the insurance administrator and a clerk. (Fire insurance has covered churches and community houses in some towns!) But while provision of advantages may lead to control, the latter must be shown. Finally in this connection it may be noted that the only insurance policies which touched Darlington's hourly paid employees were workmen's compensation and group life; and while a master policy covered all of the mills with respect to the former, Deering, Milli-

[30]It was testified that each mill decides which benefits it wants under these insurance policies. As for plate glass insurance, only a few mills carry this, and these policies vary from year to year. Boiler insurance and factory insurance have also been rejected.

ken was not named in either the one or the other. It has its own workmen's compensation and group life coverage. It is not quite correct to say that, when Darlington was liquidated there was an amount on hand, in excess of the cost of the insurance program and that it was decided to leave it in the experience fund for the benefit of all of the other mills. The record shows only that Oeland declared finally that, since the amount remaining in the reserve fund was less than the cost to Darlington to administer the policy, it should be kept in the Darlington account.

At this point, if at all, should be mentioned an old form now used as a scratch pad and employed by "Deering Milliken Mills Textile Machinery Department" before DMSC was formed in 1951. While common use of the name Deering, Milliken Mills does not prove status, the situation is different where it is formally employed on stationery. But in the absence of proof of the circumstances when the form was in use prior to 1951, of the functions and status of the Textile Machinery Department, and of the nature of any connection among the various companies with respect to that department at that time, there is no warrant for making a finding of single employer status among these companies.

In a memorandum to May, who was at that time in charge of print cloth sales for Deering Milliken, Roger Milliken used the terms "our mills," "the whole company," "the manufacturing of Deering Milliken." If it be urged that we do not credit Milliken's testimony that he noted with chagrin his own use of such phrases, and his statement that he used such terms incorrectly there and elsewhere, we are still left with what would at most be an admission that there is a close, even single employer, status. Such an admission would be evidentiary, to be weighed with the other evidence. Milliken is not qualified to determine the legal

significance of such language; but I credit his testimony, and find that it was not his intention, as he employed those terms, to ignore or to set aside the relationships which actually existed as the evidence here shows.

With respect to the substance and purpose of this memorandum, a factor's interests as well as its manufacturers' are furthered as the sales staff is informed and itself "sold" on improvements in the mills' procedures. Milliken wanted May's assistance in obtaining recognition in the market of some of the mills' goods as premium by virtue of the improvements which they had effected.

As for a few other items in the record, use of an old form ("Deering, Milliken Mills Purchasing Department") in one case of 35 to 50 noted instead of the current form ("Deering Milliken Service Corporation"); use by an employee of the ambiguous word "transfer" where the evidence indicates that a sale was made from one mill corporation to another;[31] use of a form which calls for approval in "New York" when such approval was noted in New York only by Milliken as president of a given mill when he had been in New York and before he moved to Greenville: these do not prove the single employer status which the General Counsel and the Union claim. Here again we must remember that, in weighing the evidence which may suggest single employer status, effect must be given to both the quality and the quantity of such evidence; and the quantity must be evaluated in relation to the thousands of documents examined by the General Counsel and the many months spent in his unhindered search for evidence.

Whether and to what extent Darlington's former customers have since its cessation of operations purchased through Deering Milliken and from other Deering Milliken

[31] Although we have considered the significance of the use of such words as possibly indicative of an existing relationship, we must not "make a man an offender for a word." Isa. 29:22.

mills we do not know. There is no evidence[32] of a pattern of sales to them by Darlington which, after its liquidation, was continued by other Deering Milliken mills, as we shall now see. Nor does it appear that there was a transfer of accounts, of constructions manufactured, or of styles to another mill when Darlington was liquidated. Yet such transfer and assumption of Darlington's functions would naturally and almost automatically occur were this a single employer situation. As for the few orders which Darlington was unable to fill because of the liquidation, it is clear that some were sold to other Deering Milliken mills, some to non-Deering Milliken mills. In fact, the first testimony concerning this was to the effect that an order was transferred to a Deering Milliken mill only after an attempt to transfer it elsewhere had failed. The several orders were taken over by various mills as if purchased in the open market: Darlington kept a premium or bonus if an order was now advantageous as the result of market fluctuation; it paid for the assumption of the obligation by another mill if the order price now seemed to be insufficient or if a change in construction would result in higher cost. (What conclusion could be drawn and what would the General Counsel's argument be had these orders been transferred without a differential, Darlington or the acquiring mill assuming the entire gain or loss as in an out-of-one-pocket-into-the-other situation.) One contract was cancelled with an allowance to the customer. There is no basis for concluding that the transfers favored other Deering Milliken mills or that they indicated an element of control over Darlington or the other corporations which, for example, might have permitted dictation or insistence in connection with the

[32]It might be advisable to omit the details about to be set forth in this connection, and to proceed at once to the conclusion which appears a few pages later. But the evidence is involved, and analysis may be especially helpful here.

taking over of the orders. As for Deering Milliken, its concern with these orders was that of the sales agent which had secured them and was obliged legally or morally to see that they were fulfilled.

To the extent that the Board is interested in the Union's offer to prove that Deering Milliken "has suffered no depletion in the type and amount of products available for sale by it," this was not shown at the remand hearing; the sale of orders to non-Deering Milliken mills suggests the contrary, and there is no proof that Darlington's products in their type *or* amount, were compensated for and provided in addition to what would otherwise have been the other Deering Milliken mills' production. As the offer of proof was thus discussed and the evidence submitted, the General Counsel could only state that he hoped to show that Darlington's constructions were made at the other mills when the former was liquidated or were begun by them shortly afterwards. The latter alternative might be construed to support the offer of proof although, even had that been shown, it might reflect any competitors' attempt to fill a void. The other alternative, that Darlington's constructions had been and were being made by other Deering Milliken mills, still calls for proof that Deering Milliken "suffered no depletion in the type and amount of products available for sale by it."

If a Deering Milliken salesman found that a customer wanted a given construction which was not being made by any of his manufacturers, it was Deering Milliken's function to try to persuade one of them to make it. The testimony that Deering Milliken persuaded Monarch to make a construction which Darlington had formerly made but which had "lapsed into inactivity" before the liquidation shows only that Deering Milliken suffered no depletion so far as that order was concerned. Why Darlington had discontinued the construction, we do not know; nor whether

Darlington would have returned to it and filled this order. Neither is it shown whether or to what extent this construction replaced another on Monarch's looms. Certainly production by one mill of a fabric which had sometime earlier been made by another does not prove single employer status.

With respect to another construction, the testimony shows that, with liquidation impending, Darlington could not guarantee delivery and an order was therefore placed with Monarch. But proof of the issue of depletion is not to be found in evidence that some constructions were picked up by other Deering Milliken mills and thus not lost to Deering Milliken (here again is the problem of the universal negative); on the other hand, any loss is probative, and we have evidence of loss to outside mills. In like vein, a construction which Darlington alone of the Deering Milliken mills made in 1956 was not thereafter picked up by any of the others. As for the styles encompassed in 13 percent of Darlington's 1956 production, the testimony is that no records are available to show whether those styles were thereafter manufactured by any Deering Milliken mills.

The attempt to show that other Deering Milliken mills succeeded to Darlington's business in fact would have proved too much. Thus with respect to some of Darlington's constructions it was shown that Monarch and others had not made more in 1956, and had made and sold others of them generally in larger amounts than Darlington had; but that after 1956 they made and sold them in quantities several, even many, times larger than Darlington's sales had been, with an increase in the amount sold over their own sales in 1956. With respect to one of these, before Monarch was persuaded to make this construction, Deering Milliken as sales agent lost sales, the customer purchasing it elsewhere. Thereafter Monarch's sales to this customer on this construction were increased greatly over Darlington's

in 1956. As counsel for the Respondents suggested, a single employer entity with overall control could be expected to have effected a transfer of production to other mills in the entity without interim loss to outside mills. (Of the styles included in two contracts sold by Darlington to Monarch, Darlington's production in 1956 was less than 3 percent of Monarch's in that range. It is difficult to find here evidence that Monarch succeeded to Darlington's business when it is noted that Monarch's 1957 production in that range was only 60 percent of that in 1956.) But the reference to increased sales in 1957 suggests an unwarranted claim that Darlington's sales would have continued and been thus greatly expanded had it not been liquidated. If the argument be only that Darlington would have continued with some sales and that these fell to other Deering Milliken mills, the answer is that we do not know general market conditions with respect to various styles; whether total sales of given constructions remained constant, with other Deering Milliken mills taking over Darlington's; how many of Darlington's customers bought elsewhere when "everybody move(d) in,"; the extent to which some styles lost in popularity while others gained, etc. The same kind of general and inconclusive proof was presented by the Respondents' evidence that, considering all of the Deering Milliken mills except Darlington, the increase in production of carded cotton fabrics in 1957 and 1956 was at approximately the same relative rate as the increase in 1956 over 1955, and that such increases were due primarily to new equipment; there was no increase in 1957 which could be attributed to succession to Darlington's business. I would no more base on this testimony a finding that the increase over 1956 shows that other Deering Milliken mills did not succeed to Darlington's business (actually their 1957 production was less than that for 1956 including Darlington's; other figures show a drop-off in cotton yarn spindles produced at other

mills in 1957) than I would find the contrary on the basis of the facts brought out by the General Counsel. Too many other factors and conditions exist as a bar to definitive findings on the limited evidence in this connection. We can only guess at what caused lesser production at other mills in 1957, and whether their production would have been still smaller had not Darlington been liquidated. But that Deering Milliken suffered no depletion in the products available to it for sale or that Darlington's business was transferred to other Deering Milliken mills (which mills?) has not been shown.

Similarly, what conclusion can be drawn from the fact that, of Darlington's 10 best customers, 7 in 1957 decreased by 17,000,000 yards their purchases from Deering Milliken mills of constructions "generally competitive" with those which Darlington had made, while 3 increased their purchases by some 8,000,000 yards?—or from the fact that, of the 8 customers who had unfinished contracts with Darlington at the time of liquidation, some of which contracts as we have seen were transferred or sold to other Deering Milliken mills, 6 including the 3 largest purchased less from Deering Milliken mills in 1957 than from Darlington in 1956? (As the General Counsel pointed out, "overall" figures do not have validity without details of the underlying circumstances.) Again it must be said, whatever might be deduced from this, that the evidence does not show single employer status or that the Deering Milliken mills "picked up the complete or anywhere nearly the complete business of" Darlington. Nor can we base any conclusion on the "general pattern" of the market and its unknown effect on the sales here; also unknown is the extent to which sales to the various mills could be compared because a general pattern was considered.

It was further testified that orders placed with Monarch after early September 1956 for one of Darlington's

constructions represented an attempt by Deering Milliken to retain Darlington's business. Such an attempt would be made by a sales agent regardless of single employer status.[33] Monarch's production of this item in 1956 was two and one-half times as great as Darlington's; it increased slightly in 1957. Whether this item standing alone would show that Deering Milliken suffered no depletion, the other evidence on this point cannot be ignored.

Whatever the problems connected with an attempt to earmark sales and to trace those of one period to those by another corporation at another time, the argument here is only of the nature of *post hoc ergo propter hoc;* new constructions or increases in old ones (ignoring decreases) are not *ipso facto* to be accepted as proof of transfer or succession without regard to the many undeveloped factors which determine styles manufactured and the amount of sales. We recall that the evidence in the original hearing showed the variety of Darlington's constructions through the years and the fluctuations in sales, these without any issue of succession to or transfer of customers or their orders.

Not only has it not been shown that in 1957 the other Deering Milliken mills added to their 1956 production the amount of Darlington's last annual production, but it appears that total spindle activity in the Deering Milliken mills was less in 1957 than it had been in 1956; and while there was a drop in 1957 in total spindle activity of all mills in the industry, the drop percentagewise was greater among the Deering Milliken mills. We have already noted the failure to support the offer of proof (that Deering Milliken suffered no depletion) with an attempt to show transfer

[33] Even a showing of "no depletion," as claimed, would not prove single employer status. It would be necessary to find that control (or single employer status, first shown!) prevented depletion, rather than the competitive activity and successful "moving in" of other Deering Milliken mills.

of or succession to its business. We now see that, contrary to the proffer, there was in fact a depletion.

Were it shown that other Deering Milliken mills made sales which but for its liquidation Darlington would have made, it is nevertheless clear that they did not succeed to other Darlington business. This is a picture of competition in a free market as "everybody moves in"; not of Deering Milliken control and transfer of Darlington's business to related mills. As was pointed out at the hearing, whether these were independent or integrated corporations, there would be absorption of Darlington's constructions after it was liquidated. Acquisition of some of Darlington's customers and their business, even if shown to be such, is consonant both with single employer status and with independence, and proves neither.

Aside from the issue whether the detailed testimony concerning the manufacture of certain constructions by Darlington and other mills shows any increase in constructions formerly made by Darlington which could be traced to the liquidation, several pertinent questions call for answer. Would single employer status be extended to a non-Deering Milliken mill which obtained a Darlington customer and sold to it constructions which Darlington had made? To the extent that a Deering Milliken mill obtained such business, did any non-Deering Milliken mill manufacture the constructions and seek the account? As for Deering Milliken's role in selling for mills other than Darlington, would not an admittedly independent agent, losing one manufacturer, seek to retain its customers' business by obtaining the constructions from another of its manufacturers? The General Counsel is quite correct in declaring: "Deering Milliken, in its capacity as sales agent, has a definite interest in attracting and holding established customers. In offering as wide a selection as possible, the sales agents' opportunities for sales is enhanced and pos-

sibilities for new sales are created." But it does not follow that the "absorption of Darlington's business by the other D-M mills helps to establish the single employer status." With publication of the news that Darlington was no longer accepting orders, there was general competitive activity in the industry in the direction of its largest customers: generally in such situations, and here, "everybody moves in."

What the General Counsel called a substantial increase in Pacolet's and Gaffney's 1957 production of one construction but was actually relatively small brought the total of their 1957 production of that item to little more than half of Monarch's in 1955; Monarch did not make any in 1956. The argument of transfer or succession to orders based on increased production would lead to the conclusion that Darlington, Pacolet, and Gaffney succeeded (but with limited success) to Monarch's business. The same argument addressed to fluctuations throughout the industry would "prove" similar transfer of orders and presumably single employer status of all mills in the industry. Only if we assume single employer status and general transferability of orders can we conclude that the fluctuation of business in each mill from year to year reflected in large measure transfer of orders from one to another among the Deering Milliken mills or in the industry as a whole.

The General Counsel appeared to try a different tack when, after examination concerning types of construction and overall spindle activity, he inquired concerning yarn variations. Here it was brought out that Monarch did not in 1956 run warp yarn which could produce fabrics similar[34] to Darlington's but that it did make such yarn and six other types in 1957. But this does not indicate succession to Darlington's business since in 1955 Monarch had likewise pro-

[34] At this point we recall testimony that Monarch did in 1956 produce constructions or styles similar to some of Darlington's that year, and in larger quantity.

duced such yarn with five additional types. Monarch's production of this one type did not depend on Darlington's absence, and it has not been shown to have stemmed from succession to the latter's customers and business.

It was recognized[35] throughout the first hearing that Darlington's operations were terminated, as we have already noted. Not only have machinery and equipment here been sold,[36] but they were disposed of piecemeal,[37] and there is no question concerning relationship between the closed company and a new operator of its plant and equipment.[38] The relationship between Deering Milliken and Darlington is not that of companies making the same product; nor has it been shown that the other manufacturing corporations in the chain have occupied such a status vis-a-vis Darlington as to make applicable the reference in the *Mount Hope* case[39] to an attempt "to take refuge behind the corporate entities." That the other Deering Milliken mills did not succeed to Darlington's equipment orders, and that they did not become liable for the violation or any remedy herein was evidently recognized by the General Counsel and the Union

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[35]The argument for backpay is based on this very recognition of the cessation of operations as violative of the Act. Similarly, the General Counsel's and the Union's emphasis in their briefs to the Trial Examiner after the original hearing was on Darlington's "liquidation," and no claim was made that its operations had in fact been continued elsewhere.

[36]See *New Madrid Manufacturing Company*, 104 NLRB 117.

[37]The offer of proof which the Board cited in its remand order alleged that a "large portion of the machinery and equipment was sold at a substantial loss, pursuant to Deering, Milliken & Company's plant, to its other plants in the area which produced the same broadcloth and print cloth as produced by Darlington." But no evidence, as might warrant piercing the corporate veil, was offered to show that the best prices were not obtained or that, whether or not pursuant to a plan (and whatever the extent of purchases by Deering Milliken mills), any of the other Deering Milliken mills were favored in the sale of Darlington's machinery and equipment.

[38]Cf. *Drennon Food Products Co.*, 122 NLRB No. 163.

[39]*Mount Hope Finishing Company*, 106 NLRB 480, 499.

when, although the question of remedy was then clearly before us, they sought no more at that time than a declaration that Darlington should resume operations; there was no claim that other mills had succeeded to Darlington's business and that, because of some relationship with Darlington, they should be directed to remedy the violations found.

Such evidence as is here noted and similar proof was received with respect to one department after another at Deering Milliken, DMSC, and DMRC, and one activity after another by and at those corporations and the various mill corporations. We could describe many more series of letters and memoranda which show only suggestions to the mills and decisions by the mill treasurer. In numerous instances, after many documents were discussed and received, it became quickly evident at the hearing that we had been laboring over items which do not indicate single employer status. It would serve no useful purpose to extend our analysis and specific findings. What has been noted is typical, and what has been said is generally applicable.

Were this case less complex, with fewer and no more probative items of proof, it would be necessary only to point out that, despite the extent of common ownership by members of a family group (rather than by given individuals), these corporations are operated as separate entities from separate offices in different cities or towns; and that Darlington alone was involved in the activities which led to these proceedings. Interrelationship is clear, but not control or single employer status.

We have received evidence of many lawful cooperative acts to attain lawful objectives. Whether the nature and extent of this cooperation are such as to warrant a finding of control, particularly control of labor relations, is some-

thing else. The evidence before us does not show control of the labor relations or policies of one corporation by another. *A fortiori* they do not show single employer status.

I have found that Darlington violated the Act in its reaction to the results of the election of September 6, 1956; Milliken, as its president, took the lead in such violation. But it does not appear that Deering Milliken determined that violation or had any responsible connection with it. Neither the functions nor the activities of these two corporate entities met at that point. We have only the claim that, since the president of one corporation was active in or dictated its decision, and since he was also president of the other corporation, the latter (as well as the president individually) is legally connected with and responsible for the other's decision.

No more are the other corporations of which Milliken is president connected with the violation here found. Certainly there is no *per se* carry over of any relation between Darlington and Deering Milliken, DMSC, or DMRC so that it can be found to exist between Darlington and the other mills. As for the attempt to show that labor relations at other mills were somehow connected with those at Darlington, we can summarize by noting that counsel's efforts were brave but the result was puny. The proof concerning labor relations at the mills, including evidence of independence in connection with vacation plans, transfer of employees, recruitment, retirement, and other items, indicates that labor relations, even when parallel, were independently determined.

It will be recalled that the evidence at the earlier hearing indicated that ingenuity and improvements in methods characterized Darlington's management and its operations; and that these were recognized in the finding of violation. Accepting this, the General Counsel and the Union now in effect would force strict limitation on outside, i. e., other

than Darlington, research and other services which make that ingenuity possible; such outside services are now cited as proof of single employer status. But such limitation would seriously impinge on the ingenuity noted.

What of admittedly independent textile institutes and others, such as tax attorneys and insurance companies, which provide assistance? Are these to be included in the single employer entity? What if a tax attorney owned stock in one of the mills? What if he were of the Milliken family and thus related to someone who owned stock in that or another of these companies? Would his advice under such circumstances make him liable for the mill's violation of our Act? The claim here raises more questions than can reasonably be answered if the General Counsel's position be sustained. (Joint efforts in the textile and other industries are considered *infra.*)

It is unnecessary to determine here by percentage or adjectives the extent to which a single entity is suggested. The question is rather whether such an entity has been proved for purposes of imposing liability or directing a remedy. As the various subjects or the aspects of the evidence have been weighed, it has been found that they do not severally indicate single employer status among these corporations. Nor are there enough of such aspects in combination to indicate that status. It can be argued that we should consider "the mass of information," a nebulous totality which the General Counsel and the Union cite without thereby abandoning any of their specific but insufficiently supported items; the whole is to be found greater than the sum of the parts available. The validity of this kind of finding, which can be denied only by general argument of the same order as that offered in support, usually cannot be disproved; neither can it be proved. Such an overall finding as is thus urged is of the nature of "Tis so; 'tisn't." It must leave the judicial mind in a quandry. But

having said that a finding of so-called totality usually cannot be disproved, we can indicate a greater measure of success here, where the missing part is the element of control.

It appears that somehow, if a point suggests a 1 percent doubt or possibility of single employer status, 100 such points are assumed to prove the case beyond all doubt, or 90 to show 90 percent certainty.—And a 20 percent doubt in four instances creates an 80 percent certainty. But this ignores the 100 instances of 99 percent on the other side, and the other contrary figures down to the last example: four instances, each pointing to or consonant with independent status. True, no attempt is made in such instances to assign percentage values. But such assignment in the examples here should serve to remind us that the argument of "a little here and a little there" overlooks the preponderant values elsewhere.

It is true, as counsel has stated, that we may not be able to "isolate one exhibit" as proof of a given point. But citation of an amorphous mass may cause one to forget that we have nothing more than a mass of trivialities when all of the operations of the various corporations and all of the evidence are considered.

More important than even the percentage or relative extent of assistance and cooperation is the fact that they were determined and limited by the decisions of the mill treasurer: they do not indicate control from without.—And, while counsel differ on the nature and extent of control shown, they do agree, by their repeated references to and stress on it, that the element of control must be found. Without control over decisions and operations, the total of instances of advice accepted (even were the number far greater than here shown) may reflect no more than the mills' opinion that their advisers are both faithful and competent.

The respective positions here may roughly be represented as claiming or tending to claim on the one hand that Darlington is independent of the other corporations in management and control and, on the other, that the various corporations, including Darlington, occupy a single employer status. To be meaningful here, any single employer status found must include Darlington. The evidence indicates that there are many aspects and instances of operation which typify independent organizations. Yet there are some instances which characterize or suggest a single entity. There is thus some basis for each of the respective positions although counsel for each side could readily enough propose changes in the operations which would strengthen their own respective claims.

The question is, in the accepted terminology, whether "sufficient integration exists"; it is thus one of degree or the extent to which the management and control of these corporations indicates one or the other type of operation, and supports one position or the other. In thus evaluating degree, opinions may well differ, and they probably will. My own, with full recognition of all of the evidence, is that these corporations do not occupy a single employer status.

It is evident that Board cases involving the issue of single employer status are quite dissimilar from the instant one; none has been cited which involves a factor, although there are cases of sales agents in a narrower scope. It may be concluded that the absence of any allegation of single employer status in cases where relationships are of the nature of those which exist here indicates the determination to be made in this case. Contrariwise, similarity must first be shown, and it may be that absence of prior allegation reflects only a less assiduous charging party; and, of course, new law may be declared here. Whether the Board will now depart from established precedent remains to be seen. I

have already indicated, by analysis of the evidence before us, that the law does not warrant a finding of single employer status on the instant facts.

Several recent cases involving the question of an ally relationship throw light on the issue before us. Conceivably such a relationship might exist between corporations to the extent that picketing would be held to be primary rather than secondary, as for instance where a struck employer becomes allied with another or with one of several plants of another employer. But that relationship can be found on less proof than is needed to include one corporation in a finding of violation against the other, or in a remedial order directed against that other.

We speak of single employer status, *alter ego,* integrated operation,[40] etc. But it does not appear that any of the other corporations here were "in active concert or participation with"[41] Darlington in the violations found; that they unlawfully reaped benefit therefrom; or that they have been in active concert or participation with Darlington in a common plan of evasion.[42] Even if less need be shown to establish an ally relationship as a defense to an allegation of unlawful secondary boycott, the following extract from the Board's decision in the *Bachman Machine Company* case[43] may cast some light here:

> Here, not only do the members of the same family own all the stock and property, and compose the boards of directors, of both employers, but the same individual is the president and active head of both, *controlling all their operations, including labor relations policy.* (emphasis supplied.)

[40] *Regal Knitwear Company* v. *N. L. R. B.*, 324 U. S. 9, 19.

[41] A highly restricted definition of this term is noted *infra*

[42] Cf. the Board's position as recited in N. L. R. B. v. Deena Artware, Inc., 261 F. 2d 503, 506-507.

[43] Warehouse and Distribution Workers Union, Local 688, Teamsters (Bachman Machine Company), 121 NLRB No. 165. See also *Dearborn Oil and Gas Corporation,* 125 NLRB No. 71, cited *supra* in footnote 15.

This Board statement of the general rule was apparently endorsed by the Court of Appeals for the Eighth Circuit, which first recited the facts in the *Bachman* case as follows:[44]

> Bachman and Plastics are two separate and distinct corporate employers; the capital stock of each is owned by one family; each has officers and boards of directors drawn from members of the family, the head of the family being the President of each company; each company is engaged in a different, separate and nonintegrated business; each is a substantial customer of the other; each operates a separate business in a separate plant, the plants being in fairly close proximity to each other, in the same city; each plant has a separate labor force represented by a different union; the employees of one plant are skilled or semi-skilled mechanics; the employees of the other are unskilled; the President of each company is its majority stockholder, concededly in the actual control and management of one company, and found by the Board to have been in actual control of the labor policies of the other company and to have participated actively in the negotiations with the Union which represented its striking employees, who extended their strike to the company which was not their employer.

The court then pointed out that in *I. G. Roy & Sons Co.* v. *N. L. R. B.*,[45] the First Circuit Court

> held that there was no evidence of mutual common control over labor policies or any other phase of the operations of the two companies, and that potential common control, because of the common ownership of stock, was not enough to justify a ruling that the two corporate employers were a single employer under Section 8(b)(4)(A). (Emphasis supplied.)

Bachman was then reversed with this statement:

> But we think the evidence fell short of establishing that both companies were under such actual com-

[44] 266 F. 2d 599, 602-603.
[45] 251 F. 2d 771 (C. A. 1).

> mon management or control as to make them allies or a single employer for the purposes of Section 8(b)(4)(A) of the Act.

The court then continued as follows:

> We fail to see why Bachman should, under the evidence, be regarded as an offending employer or why it and its employees should be embroiled in the controversy between Plastics and its employees and their Union, merely because the President of Bachman, who was also the President of Plastics, controlled or participated in the control of the labor relations of that company.

Whatever the difference in *Bachman* concerning management and control, the Board itself there relied on single control of operations, including labor relations policy. No more than would ownership alone prove single employer status does the testimony before us that Darlington and other mill stock prices were publicly quoted and traded in prove independent status. Either single employer or independent status can exist among both closed and publicly owned corporations. We are and have been more properly concerned with evidence of control.

The court's rejection of the "allied-employers" defense in *Bachman* has been accepted by the Board as the law of the case.[46] In several obvious respects, the relationship is not close between Darlington and the other corporations here. Whatever may be said concerning ownership, potential control of labor policies, and actual control of such policies, integration and actual common control over labor policies call for greater proof; single employer status goes even further, and calls for still more proof.

Plainly, the Board has asserted jurisdiction in integrated companies. But the converse is not true: where jurisdiction is taken, integration (much less, joint liability, and

[46]124 NLRB No. 98. The importance of control of labor relations is pointed out in *N. L. R. B.* v. *New Madrid Manufacturing Company*, 215 F. 2d 908 (C. A. 8), as cited by the General Counsel.

still much less, single employer status) does not necessarily exist. Joinder in a trade association will be considered for jurisdictional purposes even if liability is not imposed on each component entity. It is clear that evidence of a closer relationship is required for an allied-employers finding in secondary boycott cases.[47] When we consider the purpose and effect of a single-employer finding here, it must be evident that still more must be shown.

Clearly (in this situation I do not hesitate to use the term) no single employer status has been shown here. Whatever the finding in the *Bachman* case concerning ownership and common control, the several companies played a part during and in connection with the events considered in that case. In the instant case, there is no evidence that any of the other corporations were involved in the commission of the violations found. As for joinder in any of the benefits or results from the violations, as a moral basis for disseminating a remedy, the evidence shows only that other mills, among them some of those covered by the remand order, took over a few orders, all of them on an open market basis or, to use a phrase more apt in strict buyer-seller dealings, as *bona fide* purchasers for value.

There is no evidence or even suggestion that Deering Milliken or any of the other corporations, or all of them, had authority to resolve the labor dispute between Darlington and the Union; or that the Union, the employees, or any other group or persons had ever looked to those other companies to accomplish that. Yet such authority, which may exist where there is no single employer status, is a necessary attribute of such status. The Board, through its General Counsel, argued as follows in its brief to the Circuit Court in the *Bachman* case:[48]

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[47]Cf. *Dallas General Drivers, Warehousemen & Helpers, Local No. 745, AFL-CIO (Association Wholesale Grocery of Dallas)* 118 NLRB 1251, 1255.

[48]Following the quoted sentence, the brief continues in support of the principle noted supra that "(u)nder settled principles, two

> When two entities are thus allied through common ownership and actual common control of their labor relations policies, the same employer to whose premises the picketing has been extended is in a position to resolve the labor dispute of the struck employer and thereby end the picketing at his premises.

The authority and attribute have not been shown here; they were not claimed before Darlington violated the Act. Not only has single employer status not been shown, but authority elsewhere to resolve any labor dispute at Darlington does not appear to have been recognized, considered, or claimed until the question of remedy for violation here arose.

We have seen that no less proof of single employer status is required within contemplation of liability for violation of Section 8(a)(1) (3), and (5) and remedy for such violation than is required for a finding of ally relationship to bar a secondary boycott claim. Nor should we lose sight of the difference in applicability of remedy. Whereas in *Bachman* picketing would be banned, the possible remedy here is reinstatement and payment of lost wages. Of the various corporations, only the mill corporations could instate these employees; and the proof does not warrant that remedy. Neither does the proof warrant imposition of backpay liability, for whatever period, on any of the other corporations.

We need not here attempt an analysis of all of the cases on the subject of allied, integrated, or single employer status. We have already seen that the requirements for finding these may differ, as may the effect of such findings, from permitting limited exposure to what would otherwise be secondary picketing, to direct liability for remedying unfair labor practices. If other cases where the issue of single

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ıtities enjoying a separate corporate existence may nevertheless be regarded as one 'employer' for purposes of Section 8(a) of the Act if they are under common ownership and control and their labor policies are subject to common direction."

employer status was involved are different from this one, the language employed in some may nevertheless be helpful as indicative of underlying principle and Board attitude.[49] Of the cases cited[50] by the General Counsel or the Union, the *Allen* case[51] was based on more than stock ownership alone. This is true of the frequently cited *Somerset Classics* case[52] also, and of other cases cited by the Union, although its brief emphasizes the ownership aspect. The factual analysis herein, the findings, and the stated principals of law are submitted with full recognition of the rule as repeated in *National Shoes, Inc.*,[53] and which, quoted as follows in the Union's brief, supports the rule hereinabove recognized:

> Decisions of the Supreme Court and of the courts of appeals establish that where the operations of 2 corporations are closely integrated under common control, and particularly where this integration and control are manifest in their labor policy, the 2 corporations will be considered a single "joint employer" for the purposes of the Act.

In Industrial Fabricating, Inc., the Board found that various corporations constituted a single integrated enterprise. The following language from the Intermediate Report in that case indicates elements which are not here present:[54]

> Where the relationship of one company or individual to another presents such features as financial control over the latter through advance of operating capital

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[49]Surely comparison of the facts here with those in situations which we shall note infra where independent status is recognized is no less worthwhile than comparison with single employer cases where the facts are different.

[50]All of the cases cited have been examined. In the main, their differences and inapplicability here are readily to be noted.

[51]*A. K. Allen Co., Inc.*, 117 NLRB 568, enfd. 252 F. 2d 37, (C. A. 2).

[52]*Somerset Classics, Inc.*, 90 NLRB 1676.

[53]103 NLRB 438, at page 441.

[54]*Industrial Fabricating Inc.*, 119 NLRB 162, at page 199.

and inventory, supervision and direction by the former over the latter's production operations, and control by the former over the latter's production operations, and control by the former over the latter's labor relations policies, there is a "measure of domination . . . . (which is) inconsistent with the notion that (the latter is) . . . a free agent either in handling the enterprise or in dealing with the men employed." (Citations omitted.)

As review of the facts in *Industrial Fabricating* discloses the elements there present, the control and the interchange of assets, similar enlightenment can be found in the *A. M. Andrews, California Footwear,* and *Dayton Coal and Iron* cases.[55] In *Andrews* the Board found that "the Respondents form(ed) a multi-state enterprise. . . ." The Trial Examiner's finding there "that the Respondents (were) separate employers . . . (and therefore were not to) be held responsible for remedying the unfair labor practices" was reversed, the Board finding that "the Respondents constitute(d) a single employer within the meaning of the act"; and that one Respondent was "an integral part of a multi-state organization, and . . . (that the other Respondent was) responsible for remedying the unfair labor practices (t)herein found . . . ." The Board there cited and relied on "factors of paramount significance" which indicated single employer status but which are not here present. It might be argued on the basis of the *Andrews* decision alone, although the Board there reserved this question, that remedy could alone, although the Board there reserved this question, that remedy would be withheld against one of several respondents which was not connected with the violations, even where the operation is integrated. This is in harmony with that is suggested *infra* concerning need for a joint labor policy.

[55] *A. M. Andrews Company of Oregon,* 112 NLRB 626; *California Footwear Company,* 114 NLRB 765; *Dayton Coal and Iron Corp.* 101 NLRB 672.

Supplemental Intermediate Report (1959)

The Board's decision in *Industrial Fabricating* issued 6 months after the first Intermediate Report in the instant case. That decision is of further interest for, after finding violation of Section 8(a)(5),(3) and (1), and joint and several liabilty where there was a "transfer of operations," the Board significantly added:

> This is not the case of an employer who decides to go out of business rather than deal with his employees' statutory representative.

But the finding of violation in the instant case stemmed from the employer's decision, as pointed out in the Intermediate Report of April 1957, to do what was not done in Industrial Fabricating: to go out of business rather than deal with the Union. This was declared to be violative despite the protests of counsel for Darlington. In considering the question of remedy in that first Report, I relied on this very distinction between transferring a business and going out of business.

As for any further concern over so-called social consequences or the question whether an employer would be enabled to violate the Act with impunity, it may not be amiss to refer at this point to the second Intermediate Report in this proceeding, issued on April 30, 1959, in which it was recommended that the complaint against Roger Milliken be dismissed. It was there pointed out that Darlington had gone out of business, and that going out of business is a self-limiting and not a common situation; whatever is sought to be prevented, it does not constitute a benefit to the employer. Here is an important distinction between a runaway plant situation and single employer status on the one hand, and a going out of business: the transfer and accrual of business and benefit which characterize the former are absent in the latter.

Supplemental Intermediate Report (1959)

In the first Intermediate Report, while making my recommendation with respect to remedy, I explained generally why the various proposals for backpay could not be supported. There has since been some apparently special attention, as noted at this resumed hearing, to backpay from the termination of the respective employees' employment until the date when the plant actually closed or until the date of completion of the contracts of sale entered into at the auction of plant properties. Because of the attention given that proposal, I would add the following to what was said in this connection in the Report of April 30, 1957:

> Award of backpay to the date of closing of the plant or the date of sale suggests that, had the gates been closed and assets sold immediately after the decision to take such action, no backpay would be allowed. But the testimony is to the effect that the gates, figuratively speaking, had to be closed successively and over a period of weeks instead of all at once. To assume that employees would have continued on their jobs until the date when the plant was closed or sold, and to pay them for such period is to assume that Darlington did not actually terminate operations in what the record discloses was the proper manner. Nor is there any indicated basis for preferring by greater backpay those employees whose departments could earlier be closed over those who were employed for a longer time; presumably in any beginning or resumption of operations, past or future, the former would be employed, and paid, earlier than the latter. It should be unnecessary to point out that there has been no claim of discrimination against individuals as such, as by termination prior to the progressive closing of their departments; the discrimination alleged and found lay in the decision to liquidate and the progressive liquidation which followed. The fact that Darlington's various departments were thus shut down seriatim may, as argued by the Respondents, have a bearing on

the issue of single employer status, under which it would have been simpler to have closed down at once, transferring to related mills the work in process.)

When, in the Intermediate Report of April 1957, I pointed out that backpay could not be awarded because one could not say how long Darlington would have continued in operation but for the violation found, I sought to and did avoid emphasis on the concept of directing an employer to go back into business; and reference to the Circuit Court's decision in the *New Madrid* case, *supra*. (*New Madrid* was considered at that time only in connection with the issue of liability, not of remedy.) But there has since been reference to this principle without Board disapproval, and it appears that the Board would not now direct such a return. One can, therefore, with perhaps better logic and greater support, note that if Darlington is not to be ordered to resume its business, there is no basis for asserting a partial direction to resume by ordering back pay for any period after the respective departments were closed and employees terminated.[56]

Since the Board will consider the Intermediate Report of April 1957 in connection with this Supplemental Report, it may be helpful at this time to refer to another remand order, which the Board issued in the *Barbers Iron Foundry* case.[57] The Board did not there subscribe to the Trial Examiners's opinion that "until final liquidation, the closing, no matter of what duration, must be presumed to be temporary"; and, presumably because it deemed the question significant, it directed that evidence be taken to determine whether the closing was a temporary shutdown or a permanent discontinuance of business operations.

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[56] See footnote 13, *supra*.

[57] January 12, 1959, Case No. 4-CA-1649.

In *Indegro, Inc.*,[58] the Board held that individual owners do not constitute a single employer although members of an incorporated association to purchase, sell, and advertise. On the other hand, such recent cases as *General Engineering, Inc.*,[59] in which the Board found a single employer status, are readily distinguishable on their facts. Nor do such cases as *Venus Die Engineering Co.*,[60] *Metco Plating Co.*,[61] *Roanoke Railway*,[62] and *Boulder Transportation Co.*,[63] to cite a few others, point to any basis for finding single employer status here. More important than ownership is the extent of common control over operations and policies.[64]

The evidence of common ownership and control and of common direction of labor policies is clearly different in the instant case from that note in those cases in which single employer status has been found. There is no evidence that labor policy at Darlington was controlled by any other company, or that there was a labor policy at Darlington and other companies which was controlled by Roger Milliken or any other individual. Darlington's labor policy was directed by its treasurer, Oeland, subject to supervision by the board of directors and ultimately the stockholders. Where Milliken could intervene, it was through his status as stockholder, director, and officer of Darlington, not because of his position or interest in another corporation.[65] In the absence of

[58] 117 NLRB 386.
[59] 123 NLRB No. 85.
[60] 110 NLRB 336.
[61] 110 NLRB 615.
[62] 117 NLRB 1775.
[63] 120 NLRB 1783.
[64] *N. L. R. B.* v. *Condenser Corporation of America, Inc.*, 128 F. 2d 67, 71 (C. A. 3).
[65] Were we to go beyond the record and take notice of conditions in southern textile mills generally and the problems connected with attempts to organize them, even as referred to at these hearings, we probably would conclude that the policies followed here reflected those at many other and diversely owned mills in the South. It has not been claimed that community of policy among all mills in the area creates a single employer status among them.

joint policy or operation, ownership or officership in several corporations by one person is not the same in significance as control of one of the corporations by another or the single employer status of all.

Here further distinction might be made between control by one individual or company (if that were shown) of the labor policies of different companies, and a common labor policy controlled at one focal point. While a Board brief may refer to "labor policies subject to common direction," such language must be construed as meaning *common labor policy* or labor policy *jointly* applied.[66] Else there would be widespread and apparently unintended piercing of the corporate veil among all commonly owned companies otherwise wholly unrelated except in their *source of advice* with respect to labor policy. For example, single employer status would have to be found where an individual controlled the labor policies, however different, and owned a shoe factory and a stone quarry![67] The distinction here noted is supported by the holding in the *Concrete Haulers* case,[68] where the Court similarly cited a common labor policy, declaring:

> The interdependence and integrated nature of the operations of the respondents, the common ownership of stock, and the fact that the same officer administers a *common labor policy*, clearly indicate that there is only one employer for the purposes of this Act. (Emphasis supplied.)

The decision in *Concrete Haulers* is not unique; nor is the interpretation unwarranted. The books are replete with cases involving chain organizations and nationwide opera-

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[66]This aspect of what may be called "Attributed violation" is related to the concept of liability for remedy based on common control and fraud, noted *supra*.

[67]We have noted the *KBTM* case, footnote 14, supra, where jurisdiction was taken over a radio station and a grain elevator jointly.

[68]*N. L. R. B.* v. *Concrete Haulers, Inc.*, 212 F. 2d 477, 479 (C. A. 5), enfg. 106 NLRB 690.

tions in which unlawful acts were locally committed and both violation and remedy were limited to the local entity. It might be urged that holding companies generally, because of their ownership and ultimate authority, greater than in the instant case, be held responsible for violations committed by their subsidiaries. The short answer is that, in the absence of proof of liability for the unlawful acts or policies, the Board has not so held, but has limited the liability to the lesser entity. One can consider the Bell System, *supra*, or picture a wholly owned subsidiary whose products are determined completely by the needs of the parent organization, labor relations and employees' activities being nevertheless independent; so that, as relevant here, a violation found against the lesser would not be charged to the parent. Such related situations can be distinguished from the instant one, but they indicate that the findings and conclusions herein are in line with the decided cases.

In short, in these cases, as we consider labor relations and their centralization, the emphasis is not on ownership or general supervision but on the aspect of labor relations which touches the rank-and-file employee. Managerial identity does not make one company or branch liable for the violations of another or liable for remedy, but *common application* of a violative policy or practice does. If this has not been spelled out clearly in the cases, it is implicit in the decisions and needs to be recognized. It has not been shown that Deering Milliken controlled Darlington's labor policies so as to be liable for the latter's violations; or that a joint policy existed under which any other corporation became liable.

It appears both from testimony in exhibit form and from that of Roger and Minot Milliken, whose qualifications are clear, that so-called independent factors and sales agents perform many services similar to those which have

been noted as performed within the Deering Milliken group. It can be argued, of course, as it has been, that in the absence of any adjudication that these others are independent and do not themselves occupy a single employer status, their relationship might prove that they in fact are in such a status. But a general awareness of conditions in this and other industries precludes a finding of that status among factors and sales agents generally and the companies which they serve. When this subject was discussed early in the hearing, the General Counsel contended that, while Deering Milliken renders services similar to those rendered by Iselin Jefferson, the former "does a good bit more." We shall next consider the evidence in this respect: this good bit more has not been shown.

Various other groups within the textile industry have been noted and cited for their bearing here. Thus we have earlier considered the significance of reference to mills by a common or joint name. Testimony was also received concerning joint activities within other groups of companies in the industry which do not occupy a single employer status. (While not as detailed as the evidence concerning Deering Milliken and the instant mills, the evidence offered showed, as by testimony of independent ownership, that the other groups do not occupy such a status. Some of this latter evidence was submitted as of common knowledge; full opportunity was given to refute it at the hearing or in an appendix.) Surely, whatever differences may be argued concerning services performed by independent factors, it is a truism that such services, voluntarily accepted or rejected by Darlington, do not prove single employer status here. While the Union has argued that services performed by an independent factor are not relevant, the fact is that the General Counsel has sought to prove his case by evidence of many services performed; and with such evidence received, it is relevant, indeed necessary if we are to evaluate it, to

inquire whether those services characterize or are compatible with an independent status.

Thus there was submitted a list of 13 firms which are both selling agents and factors and the principal competitors of Deering Milliken, and some of whose officers and directors hold positions in the mills for which they sell. It was testified in general terms that those 13 firms offer services similar in almost all respects and in some instances beyond the services which Deering Milliken offers to the mills here. An example was cited where a factor, as an inducement to an independent mill whose business has been handled elsewhere, promised to set up a production control system, reorganize the mill's cotton buying, help set up a study of work assignments, and make available, for out-of-pocket costs only, a man who would make a study of the mill's machine layout. Examples were also noted of factors and sales agents which deal with mills in which they do not have any ownership interest as well as with mills in which they do. It was reported that one company, which was most prominently mentioned at the hearing, factors for five mills in which neither it nor its directors own any substantial stock interest beyond the minimum necessary to serve as directors of those mills.

These examples further indicate that cooperative or joint efforts in the industry do not establish single employer status. In fact it was testified[69] that factors and sales agents perform identical services for their mills in which they have a large financial interest and for their mills in which they have no financial interest. Thus we are again led to the conclusion that neither the services performed, as earlier described, nor the financial or ownership interest held indicate single employer status: we are back to the question of control of the policies and activities which

[69]All of this testimony makes it unnecessary to rely on or even to cite articles offered by the Respondents on the role and activities of factors.

have been found to be violative. As for control of other activities, this stems from the factoring element itself regardless of ownership or single employer status. Considering a factor's investment and interest, it is not surprising that it weighs and seeks to promote its principals' welfare and that, like other assignees and mortgagees, it concerns itself with insurance, taxes, and other responsibilities of its principals.

If we reflect even briefly on the example cited *supra* concerning CBS stations, we must realize that, whatever their relationship and their treatment under the Federal Communications Act and other statutes, this Board has not found in unfair labor practice cases that such stations occupy a single employer status. A similar realization must emerge as we consider the frequently announced "NBC" and its independent affiliated stations."

The Union early argued that activities and services among other groups of corporations which may not occupy a single employer status are not relevant to the issue of single employer status here: whether such other group has been designated as a single employer or entity needs to be shown. It is true that the status of the other corporations needs to be shown (Board determination with respect to other corporations is no *sine qua non*, but examination of other situations may disclose Board standards), and evidence was received that various ones as noted are independent of one another in management, control, and ownership. With proof of independence, the nature and extent of their joint and mutual activities is relevant here, as has already been suggested; for if joint and mutual activities are relied on in the instant case to prove single employer status, participation in similar activities among independent corporations reflects on the probative value of the evidence first cited here.

The evidence before us indicates that factors and sales agents in the textile industry render to companies which they do not manage or control and which are in an independent as distinguished from a single employer status, many services similar to those performed in the Deering Milliken chain. Groups of independent companies are also referred to as a chain, group, the factor's mills, etc. Whether the corporation shown elsewhere is somewhat more or somewhat less than that among the Deering Milliken mills, the differences from group to group do not warrant a finding of single employer status here. (This is probably a narrower finding than the one already made that all of the evidence of joint effort here does not warrant such a finding.)

The General Counsel has further argued that, while independent or outside purchasing agents operate for gain, purchases are here made and the Service Corporation performs at cost. But it is clear that were charges by DMSC greater, its profits would be divided according to the number of mills or roughly, after more complex bookkeeping and computation, back to those who paid for the services. We must realize also that an improvement obtained at the instance of one mill and perhaps at substantial expense is made available to the other mills; omission of the element of profit tends to equalize the cost to the various mills and avoids a greater burden on the first. As in joint efforts generally, the honestly motivated element of "you scratch my back, I'll scratch yours," more loftily expressed is, in the absence of impropriety and illegality, a mark of industrial progress, as it is of progress in civilization generally; the important element here is that it is voluntary and is not imposed on the corporations by virtue of any outside control.

It is clear that all or various ones of these mill corporations support joint purchase, research, recruitment, acci-

dent prevention and insurance, and other efforts, which are advisory and are deemed helpful. A corporation's appreciation of the element of benefit may determine its inclusion and the extent of its inclusion in such joint efforts, as witness Pacolet's self-limitation to 5 percent in the central cotton warehouse plan. It is also clear that as selling agent and factor Deering Milliken renders important sales (this impinges on styling and manufacturing) and financial, including tax, services. One can recall certain so-called institutes in this and other industries, which are independent: certainly no claim of single employer status has been made to include research organizations, referred to at the hearing, which are maintained by universities or trade schools. To the extent that joint technical efforts and developments are emphasized (and they have been at the hearing and in briefs), one need only note the well-known cooperative institutes maintained or supported by independent companies in various industries—unless it be urged, to cite one example, that the manufacturers of Camel, Lucky Strike, Chesterfield, Old Gold, and other cigarettes, or some of them, occupy a single employer status. Or shall we find such status among corporations in different but related industries because they have joined in forming a company to test food preservation by irradiation in cooperation with the Department of the Army? In all of these, as here, the element of single control of a labor policy everywhere applied is absent.

There are cases where common ownership exists to a lesser extent and cases where assistance to individual corporations is less than here; while in others assistance is greater; and in some ownership is total. But greater attainment of the desideratum of cooperation does not here or elsewhere make the cooperators or their cooperative a single employer. The position of the General Counsel and of the Union, if sustained, would have serious and probably

unintended repercussions on recognized cooperatives. While our concern need not be for cooperatives or other organizations, startling and unintended effects throughout industry suggest that the finding of single employer status would be as startling and uncalled for here.

As for Deering Milliken selling for the various mills, were the sales market staked out and divided in advance, with each mills' products and sales limited to certain constructions and outlets, such an arrangement would be evidence of an integrated structure; but even that would not necessarily show that the various corporations occupy a single employer status. Yet we have no evidence of any staking out of the market and advance limitation of one corporation's production for the benefit of other corporations. In sum, I do not find evidence of such management, direction, control, and ownership as would warrant a finding of single employer status.

The General Counsel and the Union argue for something akin to an isotopic concept of corporate authority. But instead of showing an elemental identity with different characteristics, they have attempted to show that some characteristics or activities are similar and have argued from this that the organizational structure and elements are the same. This argument and the facts shown are insufficient. Thus we have evidence of some activities which are characteristic of integrated or single-employer situations. But if such situations are characterized by certain activities, it is something else to argue and to prove the converse: that the given activities show single employer status. The validity of this last as a proposition in logic should be clear. To cite one instance, various ones of these companies might simultaneously introduce a wage increase. But a similar increase might be placed in effect at the same time in mills which are admittedly not related.

An interesting example of independent corporations in close cooperation is to be seen in the American Telephone & Telegraph Company and the Bell System. Whatever caution may be needed in any comparison with operations in another industry, the general principles indicated there may be helpful in the instant situation. As can be determined from the records of the Federal Communications Commission and the Securities and Exchange Commission,[70] there are 20 principal domestic operating telephone companies each wholly or almost wholly owned by A. T. & T., and 3 operating companies in which A. T. & T. owns a minority of the stock. These 23, with Western Electric Company, Incorporated, Bell Telephone Laboratories, Incorporated, and A. T. & T. itself, comprise the Bell Telephone System. The 25 corporations other than A. T. & T. are and are identified as subsidiaries of A. T. & T. The latter owns almost all of the Western Electric stock, and each of these owns one-half of the Bell Laboratories stock. A. T. & T. is directly represented in the membership of the Board of Directors of each of the operating companies in which it owns a majority of the stock, and it makes advances to the various corporations, which are also referred to as associate companies.

In addition to this close relationship in stock ownership and representation, the research, development, and engineering work for all of the operating companies are provided mainly by Bell Laboratories with some assistance from Western Electric, which manufactures, procures, and installs equipment for the various operating companies and is recognized and referred to as their manufacturing arm and supply unit. The operating telephone companies and A. T. & T. also cooperate in submitting ideas for development by Bell Laboratories.

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[70]See also company directory, Directors, Officers, Principal Organization Heads of the Bell System, May 4, 1959.

It is commonly known[71] that Western Electric functions on behalf of the various operating companies, which are independent in their labor relations and are considered independent for our purposes. The importance of the element of control of labor relations is further emphasized by the fact that various companies associated with Western Electric (these are not operating telephone companies, but among a reputed 3900 independent but associated manufacturing companies) have joined to accept large contracts, as from the Department of the Army. Clearly joint developmental, manufacturing, and sales efforts do not themselves create a single employer status.

The various operating telephone companies cooperate in all activities which involve more than one of them and their respective territories and operations, whether in construction or in customer service; and they share, according to a formula based on the respective amounts of plant involved, in joint revenues as well as in the cost of joint operations. Comparison can here be made with the arrangements in connection with DMSC and DMRC, *supra*.

The Bell System and A. T. & T. names and services are advertised with whatever benefit accrues to the various operating companies. Some system-wide advertising is paid for by the local operating companies according to coverage in addition to their own separate advertising. We can recall what was said *supra* concerning emphasis on the Milliken name in advertising as we note that large advertisements stress the *Bell System's* "large-scale programs of research and improvement."

The following is from "The Bell Telephone System":[72]

> The American Telephone and Telegraph Company coordinates the whole enterprise in five ways: (1) by

[71] Should any party desire to show the contrary with respect to facts officially noticed, an opportunity shall be afforded to do so on timely request.

[72] By Arthur W. Page, Vice President, American Telephone and Telegraph Company, 1941, Harper & Bros., pp. 4-7.

stock ownership in the operating companies, (2) by functioning as a general staff for the operating companies, (3) by furnishing interstate service over its long lines between the different operating companies, (4) by ownership of the Western Electric Company, which manufactures and furnishes apparatus to the manufacturing companies, and (5) by ownership in conjunction with the Western Electric Company of the Bell Telephone Laboratories, which does the research for the improvement of telephone plant and operations.

Despite the high degree of cooperation in operations, the separate corporate setups are recognized, and it would appear that external control is not imposed on the respective corporations. Labor relations of the various companies are independently directed and controlled, and the companies refer to themselves as independent companies connected with the Bell System. While the Board has heard and decided cases involving various ones of these companies, each corporation has been treated as separate and independent: in representation cases, separate units have been recognized; where violations have been found, no company has been charged with the violations of another, and no remedy has been imposed for another's violations. Taking this example of the telephone companies, we can understand that if some of them should in the future jointly control and administer their labor policies, there might be *pro tanto* a joint responsibility; this would be based on such joint labor policy control and administration, not on their joint operations and research and mutual advice, and even if there were no such operations, research, or advice.

Certainly the Bell System and its developmental and engineering work are more closely intertwined with individual telephone companies than with such others as radio and television stations which may also and in lesser degree avail themselves of the opportunities provided by Bell. Such

stations, despite their employment of Bell facilities and improvements, are quite independent of the System.

If unity of purpose establishes an integrated enterprise, as the General Counsel declares, then the Bell System is such an enterprise. But with such a broad definition, integration has no meaning in the context of these proceedings: unity of purpose "to make and sell a wide variety of cloth" would include an entire industry. But such unity does not establish the status which is our concern.

This is not to equate the Bell System with the Deering Milliken system. They are quite different. As differences are pointed out, the argument can be made, as noted *supra*, that failure to urge and prove a relationship elsewhere does not prove that it does not exist here. But we do know at least that such a relationship has not generally been recognized. At any rate—and this at least should be clear—the point is that joinder for certain purposes does not create a joint venture for other purposes or a single employer status.

No more than in what is called and recognized as the Bell System, where from the nature of the business, operation and planning are and must be combined to a great degree—no more than there, do the various corporations here occupy a single employer status. Certainly for purposes of evaluation under the Act herein, there is no such common control of business and labor aspects as to warrant a finding that such a status exists or did exist among the various operating corporations. There is here no such proved relationship as is suggested in the administration and reference to the Western Electric Company as the "manufacturing arm of the Bell System"; yet there has been no claim and no suggestion that, for the violations of the Act by one operating telephone company, another operating company, Western Electric, A. T. & T., or the entire Bell System be held liable, or that a single employer status there exists. Similarly, despite the services rendered to the various telephone

operating companies by Bell System Laboratories, the violations of one of the former under the Act are not chargeable to the latter. Neither the Deering Milliken system nor the Bell System is a single polymastic entity. The various corporations which cooperate in the one are, as in the other, independent in activity and responsibility.

Further detailed comparisons could be made with situations involving apparently independent financing by General Motors Acceptance Corporation despite similarity of name and interest; and with the relations between General Motors Corporation and its franchised dealers with their commonly cited "factory trained mechanics" whose labor relations and terms and conditions of employment are not the responsibility of the "factory." Nor does the occasional employment by an independent dealer of a mechanic formerly employed at the factory make that dealer less independent. Again it may be argued in answer that these other situations have not been passed upon and, were they before us, a finding of single employer status would be made. To this the reply must be that, as has been and will again be pointed out, unless we are ready to make such findings and until there is indication of such readiness, the very opportunity for but absence of similar claims suggests that there should be no recognition of single employer status under these facts. Further, the thoroughness with which the General Counsel and the Union prepared and presented their testimony may reflect on the facts and point the way to the decision, as the paucity of evidence to support the offer of proof is emphasized. Many avenues of contact between Darlington and the other corporations were explored. With respect to some, we have seen that the proof is as compatible with independent status as with single employer relationship. Other joint activities present even less evidence of anything more than a measure of cooperation which frequently characterizes activities in the same industry.

Before leaving the example of General Motors, it should be noted that the automobile industry presents a reverse, although related, situation from that before us: various services are there performed centrally by a single (instead of many) manufacturing organizations[73] for many (instead of one) sales agents. Yet, although all dealers must operate in a certain manner as provided in their franchise contracts, must maintain their business in a certain form, must operate in a given manner, etc., etc. (the central name is also emphasized for advertising purposes), there has been no suggestion of a claim nor any finding of single employer status embracing a manufacturer and its dealers.[74] True, the element of common ownership does not there exist; but that element, absent others which are probative, insufficiently suggests that the corporate veil be pierced.

With the awareness that comprehensive advertising is not unusual although those who join in it are and have been considered to be independent corporations, we can better appreciate the testimony noted *supra* concerning advertising the Milliken name. This also sheds light on a large-size, 24-page (including its glossy covers), well-illustrated booklet entitled "Fabric Magic by Milliken." This booklet was produced in 1952 at Deering Milliken's expense and distributed at a dinner to which store representatives, including buyers, and synthetic fibre manufacturer representatives

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[73]Despite company-wide bargaining, jurisdiction is assumed of individual plants and the remedy for discrimination at one plant is imposed against that plant alone. See, for example, *Chrysler Corporation (Ohio Stamping Plant)*, 119 NLRB 1312; *Chrysler Corporation*, 54 NLRB 510; *Ford Motor Company, Aircraft Engine Division*, 96 NLRB 1075; *General Motors Corporation, Chevrolet Forge Plant, Detroit*, 114 NLRB 234; *General Motors Corporation, Cadillac Motor Car Division*, 109 NLRB 1429.

[74]The Board has even refused to assume jurisdiction over a dealer or agency whose commerce facts did not meet the Board's standards, and without regard to the manufacturer's commerce. See *Wilson-Oldsmobile*, 110 NLRB 534.

were invited. From the introductory sentences[75] inside the front cover, indeed beginning with the title on the cover, reference throughout is to what Deering Milliken creates and produces, to magnificent mills, to Milliken's engineering and fabric development by the Research Trust, now DMRC. Then there are descriptions of *Milliken's* fabrics: Milliken's dacron-worsted, Milliken's brand name of Milium, Lorette, Cuenella, Vicinette, Bunara, etc. "Milliken specialists set out to 'engineer' " these magic fabrics.

But the looseness of these characterizations is indicated by early reference to "the mills associated with Milliken," and later, several times to "mills with Milliken." Then appear the statement that "Milliken represents the widest variety of modern mills," and a reference to "the mills served by Milliken." Later we are told that "the textile team with Milliken (is) a group of specialist mills . . . *closely integrated* to control—from start to finish—the properties, costs and quality of the fabrics they produce," and we find the phrase "the integrated group of mills with Milliken." Teamwork, it was explained, means "to pull in the same direction." The meaning and effect of integration of operations has already been considered; cooperation in suc-

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[75]These read as follows:

> This is the story of Magic Fabric and of what makes it possible. It weaves a tale of textile adventure—of new fabrics created *first* by Milliken through the wizardry of science—of standard fabrics produced in thousandfold varieties—of mills magnificent even by modern measure—of the many millions spent to equip them, the up-to-date machinery to power them —of textile technicians highly proficient in their art.
>
> Here is the magic of American textile pioneering and teamwork and know-how—and here is the evidence of a faith in the future, founded in the wisdom of nearly ninety years of progress in producing more quality in textiles of all types for more people.

At the bottom of the page is one line:

> Deering, Milliken & Co., Inc. . . . "quality-controlled textiles in quantity"

cessive stages of manufacture (this does not appear to have applied generally to Darlington) does not prove single employer status, and we have seen that Darlington's operations and the decisions as to what it would make were determined by itself, not by any other corporation. The booklet also refers to central cotton buying and research, both of which have been considered *supra*. The very reference to "central cotton buying offices" may suggest separate mills and perhaps even their independence; certainly central buying could without mention more readily be assumed where single employer status exists although it might also be pointed out (not assumed) where operations are scattered. Nor does reference to "Selective Buying By Milliken" alter the fact that the raw material is in fact bought and paid for by the mills themselves.

When the booklet mentions both Deering Milliken and the mills, it is "Milliken and the Mills," not Milliken and *its* mills. Finally, as the history of Deering Milliken and its operations are traced, we read of the "Deering, Milliken Company" and its expansion; then of "its associating with many cotton mills in the South"; and of the building of "new mill affiliates." It was testified at the hearing that this association was "as selling agent" for the mills, and that it is stated on every sales note that Deering Milliken is acting as agent for the given mill corporation.

The meaning of all this can be summed up in the phrases "There are Fabrics from Milliken for 'most Every Need . . . ," and *"you can get them all at Milliken."* The name Milliken is advertised and re-emphasized; the attempt is consistently made to identify the products which Deering Milliken sells and the mills which produce them, with Deering Milliken and particularly with the name Milliken. But if such identification has in fact been effected in the industry and among the public, we have no more than the identifica-

tion noted in such terms as Chevrolet agency and Ford dealer. That the name Milliken means a great deal in the textile market, as brought out by counsel for the Union, is a reason for mills jumping on the bandwagon and associating themselves with that name. But it need not provide incentive for mills' surrender of independence or control, nor does it prove single employer status.

The question can first be raised whether these statements or, in such a context, others perhaps more suggestive than these of common ownership, control, and even single employer status, are to be taken as admissions; or whether, used for advertising purposes, they would be classified as puffing or self-praise for the purpose immediately at hand, which did not involve labor relations or mill employees. After all, our concern is with the facts of reationship, and, while statements made and brochures prepared may shed light on the facts, such material is to be evaluated in context. Nor is there any question of estoppel to deny or limit the presentation made in the exhibit; it was not prepared for, submitted to, or connected with the employees of any of the mills or the bargaining representative of any employees.

In determining whether this exhibit, in its emphasis on Deering Milliken's leadership while recognizing the important role played by the mills, indicates single employer status, we can consider the similar emphasis on Ford, Mercury, Chevrolet, Buick, Plymouth, Chrysler in the simultaneous nationwide first showing of each of these in their new models. There too the identity of the local organization is submerged; arrangements are controlled at the center, and this despite the fact that the public unveiling does not occur at the center equivalent of the Waldorf-Astoria, where "Fabric Magic" was unveiled, but at the various local sites. Neither in the one case nor in the other, neither at Ford nor at Deering Milliken does the emphasis on centrality in-

dicate single employer status of the corporations involved.[76] Here is but another instance where a peripheral activity is cited in the absence of proof of control and joint policy with respect to the labor relations activities which concern us.

Returning to the analysis of the cases cited by the General Counsel and the Union, if counsel are unable to show that the instant case contains the elements on which the Board and the Courts rely in finding single employer status, they may nevertheless and do urge the presence of facts otherwise sufficient to show such status here. In the absence of a similar case as precedent, the instant case must stand by itself. Of course the facts in each situation are different; but, if one situation does not determine or point the way to solution in another, there is nothing in the Board's decisions to warrant a finding of single employer status here. Considering, as we must, the law and the Board's policy in cases involving other companies, it should be clear that a finding of single employer status here would not only be novel; it would be at variance with other decisions and indicated policy as well as with the law and the facts herein found.

The importance of the element of control may further be seen if we consider the cases which involve the question of union responsibility. Even where organizational relationship of local and parent international is admitted, the issue of responsibility rests, not on such relationship, but on the evidence concerning joint pursuit of a common objective, i.e., on express assumption of control as in consti-

[76] We have noted *supra* the contrast between the instant situation and that of one manufacturer with many so-called sales agencies. Again, here the advertising emphasis is on one name at the location of the single sales agent; in the automobile industry the emphasis is similarly on one name, but at the several sites of the various sales agents. The advertising purpose in each case explains the locus of such advertising.

tution or bylaws or on actual commission of violative acts on behalf of each.[77]

Since the hearing and in the course of further consideration of the evidence, many thoughts and different ways of expressing them have come to mind. These have been set down and in large measure here submitted. An approach, a concept, an expression which may not be persuasive to one may be to another. (—And this report will pass through many hands before decision.) This may be said to parallel the efforts of the General Counsel and the Union as they offered a great variety of evidence which they hoped might separately or collectively support their position. Having come to a conclusion on the basis of the hearing and the evidence adduced, and required to state my findings, conclusions, and recommendations and to give reasons, I am now the proponent for those findings, conclusions, and recommendations; and I have presented the reasons called for so that they may appear to be reasonable and persuasive. Where differences of opinion so frequently appear, reason may unfortunately be in the mind, if not in the eye, of the beholder or viewer.

All that has been said to this point, the reasons, the analogies, the arguments, may be persuasive even if not to all litigants and partisans. (Experience indicates that objections or interpretations not yet voiced must be anticipated, and what is clear from one viewpoint may not be from another so that detailed clarification may be advisable; withal this report is written for the Judicial mind, not for a

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[77] *Hitchman Coal and Coke Company* v. *B. Mitchell, etc.*, 245 U. S. 229, 249; *National Maritime Union, AFL-CIO (Standard Oil Company)*, 121 NLRB 208. Cf. *Millwrights' Local 2232, Carpenters (Farnsworth & Chambers, Inc.)*, 122 NLRB No. 41, where the Board found that, under the International's constitution, locals are "subject to its laws and usages"; and that the International *controlled* the Local's acts and compelled the violations found. No such control or compulsion is here found. Cf. also, *The Marley Company*, 117 NLRB 107.

general audience or the reading public.) But since "What's past is prologue," what has been noted in detail needs to be summarized. My findings have already been several times stated. But the realization that it has been necessary to explain in various and many ways that the discrimination here was general, not individually directed, that there is no practical remedy at this point, and that the situation is not one which can easily be repeated—all of this suggests the advisability of restating the findings in different fashion to anticipate and guard against a misconception of the evidence before us and a conclusion which may not be supported by the record.

The need to proceed thus apparently exists, whether because the case has been considered by too many or not sufficiently considered by any, although the Board has yet to declare its ultimate conclusions. In remanding the proceeding, the Board may have assumed and relied on the claims made by the Union's counsel in his early offer of proof. Aside from the question of relevancy pointed out in the dissent on remand, it is now clear that these claims of fact have not been supported.[78] This is not to say that these corporations deal with each other at arm's length; they do not. But it is one thing to find cooperation, even intimacy, and another to declare single employer status with common control and mutual liability.

The general standards recognized have made it clear from the beginning that our problem here would be and is to relate the evidence to those standards. Whatever differences may appear in different evaluations of that evidence,

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[78]Regardless of the "ultimate" conclusion, I am unable to endorse the General Counsel's statement that the "signposts . . . are clear and outstanding," and the conclusion for which he argues "inescapable." Were he correct in this, it would probably have been unnecessary (although the contrary is logically possible) to seek so many signposts and to take so much time and offer so much evidence in the attempt to attain the conclusion thus urged and indeed to escape a contrary conclusion.

the conclusion can reasonably be only that, with full recognition of those items which are compatible with single employer status and some which even suggest it, such status, or in the General Counsel's words the requisite "degree of centralization of the necessary functions," has not been shown to exist among the various corporations here or, more narrowly, between Darlington and other corporations.

We have employed different phrases which indicate different degrees of relationship; and we have seen that the proof for assumption of jurisdiction, for example, may not suffice for a finding of liability by a different entity and ultimately for a finding of control and then single employer status. "Single employer" suggests a very close relationship, and indeed a very close relationship is a requisite to extension of findings of violation or of a requirement for remedy.

It has already been noted that, were evidence available which indicates single employer status, that could be set forth with reasonable brevity. In the absence of such evidence, it would probably not be satisfactory to announce only that the evidence needed for the finding thus sought has not been submitted. What has appeared to come closest to the General Counsel's and the Union's position has therefore been detailed and considered to the conclusion that even such evidence, much less the remainder, has not indicated single employer status.

One further reminder: I have not overlooked but I reject the argument that the number of factors which are consonant with single employer status, even if none of them depends on or proves such status, proves the General Counsel's case. On the contrary, it cannot reasonably be denied that, since each might exist in an independent setup, all are consistent with such a setup. Here again, as repeated throughout the hearing, we have the distinction between cooperation and control, particularly in labor relations. A

finding of single employer status might avoid the problem of remedy noted at the first hearing herein and the first Intermediate Report. But even if an arcane mystery must be faced, the finding is that such a status has not been shown.

The ingenuity which was testified to at the original hearing, which was so impressive, and which was recognized and discussed in the earlier Intermediate Report was Darlington's. In all of the testimony at the various hearings there is nothing to indicate that, faced with manufacturing, competitive market, and other problems, Darlington relied on or could have relied on another mill or corporation for more than those services which are commonly available to independent mill corporations. Whether the related corporations or any of them faced similar problems, we do not know. There is no evidence that all marched together in solving and meeting problems or that survival of any depended on ingenuity by phalanx. Oeland's problems differed from those elsewhere, and the corporations had varied success in solving their problems.

Conceivably, Deering Milliken might have provided Darlington's capital, and by agreement have had a lien on or full title to property in Darlington's possession, all without being an *alter ego* or creating a single employer status. We are dealing with labor relations and the violations of the Act which have been found. The relationship between Deering Milliken and Darlington does not embrace such relations. Their cooperation in financial, technical, and administrative matters did not impinge on or affect Darlington's full and sole control of its labor relations. Whatever the elements of advice, assistance, and cooperation here (1) they do not extend to joint control over Darlington and other corporations, and (2) they do not cover Darlington's labor relations. Whatever the General Counsel's and the Union's hope, whatever their wish, they cannot reasonably

believe that the facts adduced show single employer status. Certainly I do not. The General Counsel's attempt to analogize the situation here with that of the General Counsel of the Board in Washington and his 35 field offices must fail. The difference between the two cases with respect to autonomy and control whether, as he cites, in decisions, help (or guidance or direction) from Washington, or transfers is too clear to require elucidation for those who, like the Board, are acquainted with the General Counsel's organization and who will acquaint themselves with the facts in this proceeding.

After the issue of violation comes that of liability, and as to that it does not appear that the relationship between Darlington and any or all of the other corporations is such as to make the latter or any of them liable for Darlington's violations. As for remedy, there is no evidence of *alter ego* continuance of operations or management, transfer of machinery, orders, profits, etc., or even legal successorship to Darlington, which could warrant imposition of a remedy on any of the other corporations. No corporate veil is here being employed to hide unlawful activities or to evade lawful responsibility, and there is none to be pierced. A contrary conclusion would constitute a roadblock on the highway of interpretation or analysis of the corporate structure and its significance. The exceptions for modifying or setting aside the concept of limited corporate liability do not apply here; and there is no basis for finding single employer status or for imposing one corporation's liability, whether potential but nonexistent, or *in esse*, on the others.

The additional evidence which the Board directed be taken has been received. It is neither necessary to support, nor does it, in the language of the dissent from the remand order, "support the complaint and prove the illegal motivation behind the closing of the Respondent (sic) plant." In ordering the remand, the Board decided to proceed

"without regard to the original (sic) purpose of the Union's offer of proof." However the Board, in "giving thorough and final consideration to the issues in this case," may evaluate this additional evidence, such evidence does not affect my findings, conclusions, or recommendations of April 30, 1957, on the issues framed by the pleadings and tried in this case; nor was it offered to modify those findings, conclusions, or recommendations, to which exceptions have long since been filed.

With respect to the amended complaint, the proof indicates no basis or warrant for finding either that violation was committed by any individual or corporation other than Darlington (specifically, there was no violation by Deering Milliken), or that liability for remedy may be imposed on any other.

I find from all of the evidence as implemented by the arguments and briefs of counsel at and since the hearing, that Darlington, in the terms of the offer of proof and the remand order, is not "but one in a chain of about 30 mills whose operations and labor relations are controlled by Deering, Milliken, & Co., Inc.," and that Darlington does not occupy a single employer status with the other corporations or any of them.

With this synoptic if itself lengthy treatment of the words, perhaps running into the millions, of oral and written testimony and argument, let us inquire, What might conceivably be found here which could reflect on possible remedy? No basis has been shown for directing any other mill to employ Darlington employees. Nor can they be employed by Deering Milliken, DMSC, or DMRC. So much for "reinstatement to their former or substantially equivalent positions." As for backpay, Darlington's remaining assets on hand are presumably sufficient under most of the remedies proposed against Darlington and unless employment in the other mills were directed; and

in the latter eventuality, those mills could with equal legality be directed to make the employees whole! But since it does not appear to me to be even remotely possible that employment in the other mills will be directed, the question remains, What might conceivably be found here which could reflect on possible remedy? Aside from the objections such as those noted in the dissent to the order of December 16, 1957, to requiring this labor, we have indeed labored but brought forth not even a mouse.

This is the third Intermediate Report in this proceeding, the first, as noted, having been issued 2½ years ago. It appears that the Board will review all three jointly.

I have consistently attempted to apply the law to the facts as found. I have recognized ideas and attempts, and anticipate more, to prevent a "social wrong" and to promote what is "fair." But this is not the occasion to debate social problems; and any who seek to achieve what they deem to be social improvements must, whatever their disappointment, seek elsewhere and in a different forum. We do not here consider the question whether the legislature should or would react to arguments addressed to the "good of the country." Whether there be agreement or not with my findings, conclusions, and recommendations, and whatever may lie within the tropics of anyone's heart, this must be recognized as a proceeding which does not create rights but finds and declares them as established by the Act and the cases. In this connection I would quote from a recent opinion of Chief Judge Hutcheson, himself quoting as follows:[79]

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[79] *Refinery Employees* v. *Continental Oil Company*, 268 F. 2d 447, 460 (C. A. 5), concurring opinion, quoting from Holdsworth, *Some Lessons from Our Legal History*, page 105. See also footnote 13, *supra*.

> Philosophical speculation about law and politics is an attractive pursuit. A small knowledge of the rules of law, a sympathy with hardships which have been observed and a little ingenuity, are sufficient to make a very pretty theory. It is a harder task to become a master of Anglo-American law by using the history of that law to discover the principles which underlie its rules, and to elucidate the manner in which these principles have been developed and adapted to meet the infinite complexities of life in different ages. Such students of our law will learn even though at second hand, something of the practical wisdom which comes from knowledge of affairs. They will for that reason be able to suggest solutions of present problems which will depend not merely on their own unaided genius, but on the accumulated wisdom of the past.

An official who had no connection with this proceeding at the time of the hearings has recently but unofficially declared: "Where the administrative responsibility requires interpretation of the law, it is necessary to find a reflection of the common will in the way that the law-making body intended." At the risk of causing some unhappiness and even arousing displeasure (how frequently can that be avoided in deciding these cases?), I do not conceive it to be my duty or even my prerogative "to find a reflection of the common will." It is necessary "to find . . . the way that the law-making body intended"; and that is indicated in statute and decisions.

This is no sociological[80] problem, but a legal one. It is not for us here to strive to bring grapes of Eshcol to some who seek relief; our function is to recognize existing rights

[80]We have seen that the remand hearing lay beyond the scope of the legal involved, and even of the administrative questions raised by the pleadings. Whether or not the remand was born in whole or in part of a sociological emphasis, it may have encouraged such emphasis by presentation of the issue of "empire."

and liabilities. To quote Judge Prettyman again, "The function of an administrative agency is the administration of law—no more, no less."[81] This is as true of the trial examiner's function.

Substantial evidence on the record as a whole must be our *modus decidendi* and our decisional cockade. As we consider our freedom, our responsibilities, and our rights, any other gonfalon unfurled will be seen to be a "pestilence that walketh in darkness; . . . destruction that wasteth at noonday."[82]

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

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[81] *Trial by Agency*, page 10.

[82] Psa. 91:6.

Conclusions of Law[83]

1. Deering, Milliken & Co., Inc., does not control the operations or labor relations of Darlington Manufacturing Company.

2. Darlington Manufacturing Company does not occupy a single employer status with "related"[84] or other corporations.

3. Deering, Milliken & Co., Inc., has not engaged in unfair labor practices within the meaning of Section 8(a)(5), (3), or (1) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend:

1. That the complaint be dismissed as to Deering, Milliken & Co., Inc.

2. That any claim herein against "related corporations" because of alleged single employer status be dismissed.

Dated at Washington, D. C., this 31st day of December 1959.

LLOYD BUCHANAN
Lloyd Buchanan
Trial Examiner

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[83]These conclusions supplement those in the Intermediate Report of April 30, 1957. As to the Respondent Roger Milliken, reference is made to the Board's order of October 22, 1958, and the Intermediate Report of April 30, 1959.

[84]Thus designated in the Board's order of December 16, 1957.

APPENDIX A

Exhibit A

The officers of Deering, Milliken & Co., Inc. are:

Roger Milliken	President
Gerrish H. Milliken, Jr.	Vice-President and Assistant Treasurer
Seth M. Milliken	Vice-President
J. C. Harris	Vice-President
A. J. Dillard	Vice-President
W. Kuenzel	Vice-President
Harold A. Hatch	Vice-President and Assistant Treasurer
Joseph R. Smith	Vice-President and Assistant Treasurer
Minot K. Milliken	Vice-President and Treasurer
Francis G. Kingsley	Vice-President
I. P. Crowther	Vice-President
Alexander J. May	Vice-President
Charles W. Kable, Jr.	Secretary and Assistant Treasurer
E. P. Flanigan	Comptroller and Assistant Treasurer

The directors of Deering, Milliken & Co., Inc. are:

Roger Milliken
Gerrish H. Milliken, Jr.
Minot K. Milliken
Francis G. Kingsley
Harold A. Hatch

The officers of Darlington Manufacturing Company are:

Roger Milliken	President
H. A. Hatch	Vice-President
J. M. Oeland	Secretary and Treasurer
C. W. Kable, Jr.	Assistant Treasurer

The directors of Darlington Manufacturing Company are:

F. G. Kingsley	Resigned September 12, 1956
H. A. Hatch	
J. H. Lyles	
Minot K. Milliken	
Roger Milliken	
W. S. Nicholson	
J. M. Oeland	
G. H. Milliken, Jr.	Elected September 12, 1956, in place of Mr. Kingsley

Supplemental Intermediate Report (1959)

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

DIVISION OF TRIAL EXAMINERS

WASHINGTON, D. C.

DARLINGTON MANUFACTURING COMPANY ROGER MILLIKEN DEERING, MILLIKEN & CO., INC.[1] and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO	Case No. 11-CA-1071

Mr. Jerry B. Stone, for the General Counsel.

Messrs. Townley, Updike, Carter & Rodgers, of New York, N. Y., by *Mr. John R. Schoemer, Jr.*, for Deering, Milliken & Co., Inc.

Messrs. Price & Poag, of Greenville, S. C., by *Mr. John R. Schoemer, Jr.*, for Darlington Manufacturing Company.

Mr. Gerald A. McCarville, of New York, N. Y., for Roger Milliken.

Miss Patricia E. Eames, of New York, N. Y., for the Union.

[1]All findings, conclusions, recommendations, and responsibility with respect to Deering, Milliken & Co., Inc., herein attach to Deering, Milliken, Inc., its successor by merger and change of name.

SECOND SUPPLEMENTAL INTERMEDIATE REPORT AND RECOMMENDED ORDER

BUCHANAN, Trial Examiner: Delay in the decision of this case has brought forth further hearings, required additional Intermediate Reports, and encouraged desperate dialectics. Bearing in mind that our concern has been with the situation in and about 1956, this instalment might well be called The Apotheosis of The Insignificant. (This is intended, not in disparagement of the parties, counsel, or any of them but as encouragement to a decision more effective and determinative than the Trial Examiner's Reports, first made a long time ago and then several times since.) The portion immediately before us has already been on preliminary inspection by the courts and has extended by more than 1 year the serialization of the problems involved.

The Intermediate Reports issued herein on April 30, 1957, April 30, 1959, and December 31, 1959, were before the Board when by notice of motion dated January 9, 1961, the Union moved that the Board remand the proceeding to receive newly discovered evidence. The Board granted this motion on February 15, 1961, and proceedings then were held in the United States District Court for the Middle District of North Carolina and in the United States Court of Appeals for the Fourth Circuit. Thereafter a notice of hearing issued on January 22, 1962, and a hearing was held before me on February 5, 1962, at Winston-Salem, North Carolina.

The issue at this hearing concerned the merger of Deering Milliken & Co., Inc., into Cotwool Manufacturing Corporation and the effect thereof on any responsibility of the former or its successor, Deering, Milliken, Inc., for the unfair labor practices of Darlington or to remedy those unfair labor practices.

At the close of the hearing, counsel were heard in brief oral argument. Pursuant to leave given to all parties, briefs have been filed by the General Counsel, the Union, and the Respondents, the time to do so having been extended.

The stipulations and testimony concerning the relationship between Deering, Millken & Co., Inc. (and its successors) and the various mill corporations in 1960, received at the hearing, are by the remand, deemed material to the present inquiry. Although reference will necessarily be made to the evidence with respect to other mills, I consider it unnecessary to go beyond the relationship between Deering, Milliken and Co., Inc., and Darlington since that is the primary issue to be determined in connection with the question of responsibility which is before us. The evidence here is to be weighed and, by a process of working backward as urged by the General Counsel, deductions are to be made concerning the situation as it existed in 1956, with a finding that Deering, Milliken and Co., Inc., "had caused the discrimination." (This letter is not quite the same as the claim of single employer status.)

By comparison with the problems previously considered, the additional matters offered at this hearing provide relatively little problem. The issue litigated in the second hearing and covered in the third Intermediate Report was the relationship between Deering, Milliken & Co., Inc., and Darlington, and the conclusion was limited to that; that hearing, although left open for a time for the purpose, was not extended to the relationship between the former and the various other corporations. In this latest hearing, our inquiry although more brief refers to the various manufacturing companies.

There is neither conflict nor contradiction with respect to the facts adduced; the lone witness now called, Minot K. Milliken, who had previously testified as vice president, treasurer, and a director of Deering, Milliken & Co., Inc.,

was not cross-examined. But the opinions of the parties and their arguments based on these facts are antipodal.

The exhibits received at this hearing were primarily offered and received as background to support and explain the oral testimony and the action taken. They have been examined and relied on to the extent that the parties have themselves indicated and relied on them. Upon the entire record at this hearing, considered both separately and in conjunction with the record previously made in this case, I make the following:

Findings of Fact (with reasons therefor)

In the spring of 1960 Deering, Milliken & Co., Inc., heretofore admitted and found to be a sales and factoring corporation, and The Cotwool Manufacturing Corporation, a manufacturing corporation which owned (in the generic sense) a number of mills, were merged; and the new entity by change of name is now known as Deering, Milliken, Inc. The latter is a manufacturing, sales, and factoring organization, and the Respondents point out that for the first time here all of those functions are performed by one corporation. The General Counsel has previously and now seeks to show that all of these functions, particularly the first, were performed by Deering, Milliken & Co., Inc., in and about 1956 with special reference to Darlington.

Working determinedly, but necessarily within the limit of available facts, the General Counsel has brought out that the merger was effected after a series of informal meetings which began in the late autumn of 1959 or January 1960 and were attended by Roger Milliken, Minot K. Milliken, Francis G. Kingsley, and Gerrish H. Milliken, each of whom was and is an officer of both Deering, Milliken & Co., Inc., and Cotwool. (Minot Milliken testified that not a week went by but he discussed some phase of the business of the

two companies.) The first formal meeting of the directors of both corporations was held on April 5, 1960; and the merger or reorganization was formally agreed upon in May and consummated, it was indicated, in June 1960 and thereafter.

Members of the Milliken family i.e., descendants of Seth Milliken, collectively owned a majority of the shares of both merging corporations, but individual ownership by the various descendants was not the same in both. Some owned stock in one of the companies, some in both but in different amounts. Stock ownership was quite different after the merger, the holders of shares of Deering, Milliken, Inc., owning aliquot interests in the combined assets.

Minot Milliken testified that the merger was prompted by two factors: administrative problems, and tax considerations of growing significance. The latter were not explored, but concerning the administrative problems it was explained that there had been a conflict of interest between Deering, Milliken & Co., Inc., whose costs had been increasing as its services for Cotwool had been expanding, and Cotwool, which was the beneficiary of those expanding services. The meetings were held and action taken to provide a fair arrangement among the stockholders of both companies.

For whatever conclusions may be argued from this, we may note that after the merger, and in the latter part of 1960, several subsidiaries of Cotwool (by that time presumably subsidiaries of the new corporation) were in status merged into the parent company. The motion for the instant remand was based on the announcement of the new divisional setup in connection with these latter mergers. The press release was prepared by Roger Milliken, who was president of the merged corporations and is president of Deering, Milliken, Inc.

We have seen that as between Deering, Milliken & Co., Inc., and Cotwool, the merger was accomplished to resolve

administrative problems and to obtain tax advantages. It was brought out that since the merger, Deering, Milliken, Inc., has continued the selling and factoring functions formerly performed by Deering, Milliken & Co., Inc., and that with former Cotwool employees it has continued Cotwool's manufacturing operations. All of this, including an equitable arrangement to cover services and charges therefor, could be accomplished by previously wholly independent companies.

In this connection we note the testimony that the reporting methods were not changed after the merger: that boards of directors of the affected mills were changed, but the officers and managing personnel retained their prior functions; and that there has been no substantial change in methods with respect to sales, in insurance plans covering the former Cotwool mills, vacation plans, purchasing arrangements, technical assistance to mills, or recruitment policy (these considered in the Intermediate Report of December 31, 1959). All of this is as consonant with independent status before merger and certainly with absence of that measure of control which here concerns us as with the earlier single employer status which has been alleged. In the affidavit in support of the motion for this remand it is stated that the manufacturing divisions *may* have existed for many years. (That they were owned by or divisions of Cotwool, not of Deering, Milliken & Co., Inc., has been explained.) It can similarly be urged that the merger may be indicative of prior single employer status; but by the same token, it may not be: The fact of status prior to the merger and specifically in 1956 needs to be proved.

Merger to effect a more equitable arrangement does not prove a pre-existing single employer status. Rather, such a status might result in informal changes and transfers without a merger. Nor is that status shown by a subsequent merger to achieve savings.

Neither does it appear that the relationship and problems between Cotwool and Deering, Milliken & Co., Inc., were similar to those between the latter and the cotton goods mills generally and Darlington specifically. In fact it was testified that the administrative problems so-called did not exist with respect to the cotton mills. The merger before us was prompted by problems with respect to mills owned by Cotwool, and *other* than and different from any with which we have been concerned.

In short, the current aspect of these proceedings can be summarized as follows: Deering, Milliken & Co., Inc., denying that it controlled Darlington and was in a single employer status with it, had claimed that it was not itself a manufacturing company. The published stories which emanated from the press release of December 28, 1960, indicate that Deering, Milliken, Inc., which had been formed from the merger of Cotwool Manufacturing Corporation and Deering, Milliken & Co., Inc., is a manufacturing company, and thus appeared to give the lie to the claim previously made by the latter and analyzed in the Intermediate Report of December 31, 1959. The evidence now received shows that the Union's impression noted in the motion of January 9, 1961, was erroneous, and that the manufacturing functions of Deering, Milliken, Inc., stemmed from Cotwool and mills which Cotwool had controlled. In fact, most of the mills listed in the release were, in a single exhibit received at an earlier hearing, shown to be divisions or subsidiaries of Cotwool. The General Counsel urges that what appear to be descriptive references to retention and continuance of duties at other mills (in one case the phrase used is "also is Treasurer . . .") reveal "a recognition that the entire entity included" such other mills; the Union's argument is that these references show that the new corporation took for granted that it controlled the non

wholly-owned mills. I find that although now included in the divisions of Deering, Milliken, Inc., the mills actually covered by the release have not ben shown to have borne such a relation to Deering, Milliken & Co., Inc.

In the Intermediate Report of December 31, 1959, cases were cited to show that where, under the conditions there detailed, there is no joint labor policy or exercise of control over labor policies, even common ownership does not make one entity liable for violations of another. Conceivably what was said or done in 1960 might indicate such necessary control as would warrant a finding of common liability. But for such a finding as of 1956, we must now find that the vital elements of control were exercised at that time. Continuity must be shown in order to connect the 1956 situation with the 1960 events so that by a process of working backward the subsequent can be related to and equated with the prior. Events and activities among certain companies in 1960 do not *ipso facto* relate to our 1956 situation, and the question remains, what were the facts in 1956?

Aside from the absence of necessary proof of single employer status in 1960, I can see no sufficient relevance of events among other companies in 1960 to the issue before us, that issue being single employer status as a basis for the liability which was created in 1956. Evidence of events in 1960 shows no more than relationship between Deering, Milliken & Co., Inc., and certain corporations other than Darlington; it does not show this as of 1956 with respect to Darlington, which cannot be substituted for the corporations cited as of 1960. I therefore find that the evidence received concerning Deering, Milliken & Co., Inc., and other corporations in 1960 does not affect the findings made concerning single employer status when, as previously found, the Act was violated and when Darlington became liable for such violations. Nor does this evidence indicate liability by succession to Darlington's obligations and responsibilities.

Insofar as succession is concerned, and without repeating the examples cited and the analysis made in the Intermediate Report of December 31, 1959, it may be said (until the Board speaks otherwise) that where the element of control there described has not been shown, the test of liability of one entity for the violations by another is as follows: Referring to the entity which is now sought to be held, has that entity taken over or succeeded to the assets and interests of the violator other than at arm's length as by a *bona fide* purchase for value or an open market acquisition? Thus for example, aside from control, an *alter ego* attempt to act for the violator, a preferential transfer and attempt to continue the violator's business merely under another name—these would indicate liability of the successor. It is that very element of identity or substitution which provides the basis for a finding of liability where there is common control or general transferability. For in these latter situations the community or continuance of control provides the element of benefit which has been obtained or sought by a preferential assumption while the concomitant liability found has been evaded. But as the analysis of the evidence previously received has shown, preference and evasion have not been shown.

The instant hearing has thus brought the answer to several questions posed by the remand application, as noted in the Circuit Court's opinion of October 13, 1961. We now have the facts concerning the merger of Deering, Milliken & Co., Inc., and Cotwool. It has not been shown that the press "announcement (of December 1960) was inconsistent with the earlier contention of Deering, Milliken & Co., Inc. that it was not engaged in manufacturing operations." That announcement referred to fine goods, worsted, and woolen divisions, not to print cloth mills, like Darlington, as the Circuit Court pointed out. Control of mills by the new Deering, Milliken, Inc., through its succession to Cotwool does not show prior control by Deer-

ing, Milliken & Co., Inc. Cotwool's control of various mills in 1960 does not indicate that it similarly controlled Darlington in 1956, or that Darlington did. Nor are the 1960 activities connected with Darlington, which has not existed for several years except perhaps by prolongation because of these proceedings.

Despite the passage of time, the Report of April 30, 1957, is and will be before the Board for consideration, and it may be of some help to allude here to an argument which, if not raised before me may nevertheless at some time be deemed worthy of resolution. This is that backpay should be awarded until the date when Darlington officially "ceased its existence." But the answer to that proposal or argument is that the question of remedy resolves not around Darlington's existence as a corporation but around its continuance of operations, when employees could work and be paid. Were the argument of continued existence followed, what would be said were the respondent an individual rather than a corporation?

As for any concern[2] over the absence of deterrent to commission of unfair labor practices if a violator is permitted to go scot-free, i.e., without application of a backpay and reinstatment remedy, it should be noted that such circumstances are self-limiting. The Board has not been deluged with such cases, and for good reason. This situation exists only where the employer goes out of business, a drastic step indeed to avoid the usual remedy. Quite different are cases (some of these will be noted *infra*) of plant removal, sale, partial closing, etc.

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[2]It is within the Board's functions to consider practical effects, as it does. With respect to concern for the effect of the recommendations, the Board has in another connection stated: ". . . any conclusion as to the detrimental effects of the Act here would be born of speculation, and we do not believe that speculation is a sufficient basis to support a finding that it will not effectuate the national policies set forth in the Act to proceed in the case." (*West India Fruit and Steamship Company, Inc.*), 130 NLRB 343, 366.

In the Supplemental Report of December 31, 1959, I declared that no objection was raised to bringing in of the additional respondents in that remand proceeding. The transcript shows that counsel for the respondents was there willing to have the proceeding extended to all who had previously been served with a charge. In view of my findings, it appeared unnecessary to explain further or to support my declaration to that effect. Since the respondents thereafter questioned this, it may at this time be pointed out that the limitation of Section 10(b) of the Act is against issuance of an unfair labor practice complaint against a person not served with a timely charge; but that the statutory limitation does not apply where the General Counsel seeks to extend the remedy only and where *alter ego* or single employer status exists.[3] Hence, "jurisdiction" may be extended for purposes of remedy where single employer status is shown. However strained some arguments in the past in support of jurisdiction (these have frequently been based on little more than a sense of necessity and nebulous "justice"); however skillful, as in the instant case, the arguments *contra;* the distinction between unfair labor practice violation and liability for remedy should be clear, as should be the limitation of Section 10(b) to the former.

Since this is a Supplemental Intermediate Report, it may be helpful to consider briefly some decisions which the Board has issued during the pendency of this case. Of course, what had been noted in the various Intermediate Reports herein was before the Board when those decisions

[3]Although such questions, especially when not alleged in the complaint, may be left for compliance, that or similar reasoning presumably prompted the remand order of December 16, 1957, and the acquiescence of the respondents, just noted. Cf. the following from *N. L. R. B.* v. *Aluminum Tubular Corporation,* F. 2d (C. A. 2), February 19, 1962: "A 'finding' that one company is the 'alter ego' of another is a conclusion of law, not entitled to the benefit of section 10(e) of the National Labor Relations Act. . ."

were issued, as it was when their respective Intermediate Reports were made.

In *The R. C. Mahon Company*[4] case, as the Board pointed out in *Bonnie Lass, infra,* "the operation was still required and being performed, having only been let out on contract." The Board ordered Mahon to reopen the closed departments, resume the operation, and effect full reinstatement with backpay, "no more than administrative alterations" being required.

In *Bonnie Lass Knitting Mills, Inc.,*[5] the employer's business operations were being continued, but on a substantially reduced scale. There again the contrast with the instant situation is clear. The Board ordered reinstatement if full scale or manufacturing operations were resumed; otherwise, backpay until the respective discriminatees secured substantially equivalent employment elsewhere.

In *Barbers Iron Foundry,*[6] the Board in 1960 directed backpay for the period of the temporary closing of the plant.[7] The refusal to order unconditional reinstatement or backpay after the discriminatory permanent closing suggests confirmation *pro tanto* of the original recommendations herein.

In *M. Yoseph Bag Company,*[8] on its finding that the employer "did not cease functioning entirely" when the employees were discriminatorily discharged, the Board directed payment of backpay until the business was sold or until the employer in fact ceased functioning. To the extent that operations were partially continued, the Board may have analogized that situation with the facts in *Mahon*

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[4]118 NLRB 1537.

[5]126 NLRB 1396.

[6]*Id.* at 30.

[7]There was no such condition in the instant case. As pointed out in the first Intermediate Report, Darlington's closing was immediate and orderly as the work in process was completed.

[8]128 NLRB 211.

and *Bonnie Lass*. Again, reinstatement was conditioned upon resumption of operations.

This attempt to distinguish the "tangled underbrush of past cases" among themselves and from the instant case may lead to the impression that the principles involved have been "not always clear . . . consistent or reconcilable."[9] But they are in fact reconcilable and consistent with the recommendations heretofore made in this case with respect to the remedy, and of course the findings of unfair labor practice.

As for the issue of single employer status, further reference may be made to that portion of the Intermediate Report of December 31, 1959,[10] which included an analysis of the *Roy*[11] and *Backman*[12] cases. The criterion of common control of labor policy rather than mere common ownership was applied by the General Counsel in the recent Section 10(1) proceeding involving the Knight Newspapers;[13] and a temporary injunction there issued because, despite admitted common ownership, there did not appear to be common control of labor policy. If common ownership without common control is consistent with the existence of "neutrality" in connection with secondary boycotts, *a fortiori* such ownership without common control does not warrant a finding of single employer status here for purposes of remedy.

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[9] *Northwestern States Portland Cement Co.* v. *Minnesota*, 358 U. S. 450, 457.

[10] While reference is being made to the Intermediate Report of December 31, 1959, a typographical correction can be made by inserting the words "issues" after "legal" at the end of the first line of footnote 80.

[11] 118 NLRB 286; 251 F. 2d 771 (C. A. 1); 120 NLRB 1016.

[12] 121 NLRB 1229; 266 F. 2d 599 (C. A. 8); 124 NLRB 743.

[13] *Roumell* v. *The Miami Printing Pressmen Local No. 46*, U. S. D. C., Eastern Dist. of Mich., Southern Div'n, October 19, 1961.

In another recent case,[14] the Board has reiterated the factors of controlling ownership, common control generally, and centralized control of labor relations. Again, even where there were separate bargaining units and the labor relations of two corporations were conducted separately, the Board found single employer status; but the labor relations of both companies were there controlled by the same owners, and there was an interchange of employees, equipment, and contract work.[15]

The General Counsel argues an analogy with *Local 138, Operating Engineers (Nassau and Suffolk Contractors' Association, Inc.)*[16] and the direction there that a responsible party, although in the background, remedy unfair labor practices found. The question of control by and responsibility of Deering, Milliken & Co., Inc., has previously been considered in detail even though this analogy was not.

The question of jurisdiction was featured in the recent case of *Peninsular & Occidental Steamship Company.*[17] Going beyond the element of ownership, the Board there held that the chief respondent had full control of the vessel and was in fact the employer of its crew and that other companies were merely its instrumentalities. (The relative significance of ownership and other factors herein have previously been indicated.) Similar findings beyond ownership were made in the leading case there relied on by the Board, *West India Fruit and Steamship Company, Inc.*[18]

Neither with respect to remedy against the original respondent nor single employer status do the Board's recent

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[14] *Amalgamated Lithographers (Miami Post Company),* 130 NLRB 968, 975.

[15] *Aluminum Tubular Corporation,* 130 NLRB 1306.

[16] 123 NLRB 1393, 1405.

[17] 132 NLRB No. 1.

[18] 130 NLRB 343 347-348.

decisions warrant modification of the findings, conclusions, or recommendations heretofore made. Given the opportunity, on the basis of activities by other companies in 1960, to prove a single employer status between Darlington and Deering, Milliken & Co., Inc., in 1956, the General Counsel has not shown that, whatever the present or 1960 connection between Deering, Milliken, Inc., and other companies, that relationship and specifically a single employer status existed in 1956 and that it included Darlington.

Upon the basis of the above findings of fact and upon the entire record at this hearing and in the case, I make the following:

Conclusion of Law[19]

1. Deering, Milliken & Co., Inc. (Deering, Milliken, Inc.) is not responsible for the unfair labor practices of Darlington Manufacturing Company, or to remedy those unfair labor practices.[20]

RECOMMENDATION

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record at this hearing and in the case, I recommend:

That the complaint be dismissed as to Deering, Milliken & Co., Inc.

Dated at Washington, D. C.
March 23, 1962

LLOYD BUCHANAN
LLOYD BUCHANAN
Trial Examiner

[19]The conclusion and recommendation herein supplement those heretofore made to this case.

[20]This conclusion is in the language of the Remand Order of February 15, 1961.

TABLE OF CONTENTS

	PAGE
Decision and Order of National Labor Relations Board	1
Opinion of Boyd Leedom	34
Opinion of Philip Ray Rodgers	35
Intermediate Report and Recommended Order (1957)	44
Intermediate Report and Recommended Order (1959)	86
Supplemental Report and Recommended Order (1959)	101
Second Supplemental Report and Recommended Order (1962)	234

EXCERPTS FROM TESTIMONY

Boyd E. Payton:	
Direct	249
Redirect	259
James P. Mozingo, III:	
Direct	260
Cross	267
Redirect	268
James M. Oeland:	
Direct	268
Direct	492
Direct	1144
Cross	1188
Redirect	1214
Lawrence Wilson Cook:	
Direct	302
Cross	307
Mrs. Elizabeth Johnson:	
Direct	312
Mrs. Nettie Whitley:	
Direct	315

PAGE.

Forrest A. Campbell:
Direct 317

John Benjamin Plummer:
Direct 319

Eli Welch:
Direct 321

Corbin Andrews:
Direct 324

Mrs. Allen Gainey:
Direct 324

Mrs. Oleen Garrison:
Direct 326

Rayford Carnes:
Direct 329

Mrs. Marion Gainey:
Direct 333

John B. Floyd:
Direct 336

Maude T. Grant:
Direct 338
Cross 341

Margaret Truett:
Direct 341

Charlie L. Frazier:
Direct 342

Mary Elizabeth Baker:
Direct 344

Abbie Baxton Jacobs:
Direct 347

Jessie P. Harrelson:
Direct 348

PAGE

Harry O'Neal:
Direct 354

Chesley H. Lloyd:
Direct 356

Geneva Elmore:
Direct 358

Dorothy Welch:
Direct 360

Newey Lee:
Direct 361
Cross 363

Miriam W. Johnson:
Direct 364

F. L. Hutson:
Direct 365

Maggie Reed:
Direct 367

Melvin Benenhaley:
Direct 369

Eugene McDaniel:
Direct 370

Frances Lenora Boan:
Direct 372

Douglas Taylor:
Direct 374

Grace Truett:
Direct 375

Charles Kelly:
Direct 377

Nora Lee King:
Direct 379

PAGE

Mrs. Marie Truett:
Direct 384

Viola Weatherford:
Direct 384

Roger Milliken:
Direct 387
Cross 436
Recross 465
Redirect 473
Recross 475
Redirect 479
Direct 968
Cross 1130
Cross 1216
Redirect 1236

Willard A. Goodwin:
Direct 480
Cross 485
Redirect 485

Hugh Campbell:
Direct 486

David K. Shirley:
Direct 487

Thomas Marion Baker:
Direct 495
Cross 495

William A. Hammond:
Direct 496
Cross 496

Frank Kinsey:
Direct 497
Cross 498

Dewey Cox:
Direct 500

PAGE

Albert E. Hutchinson:
Direct 501

Shirley Passmore:
Direct 503

Troy J. Tobias:
Direct 503

Giles C. Kinsaul:
Direct 504

Minot K. Milliken:
Direct 513
Cross 576

E. Eliot Miller:
Direct 591
Cross 626
Recross 628

Charles W. Kable:
Direct 630
Cross 652
Redirect 653

Paul J. Wilson, Jr.:
Direct 655
Cross 678
Redirect 682

Kenneth M. Lowry:
Direct 682
Cross 720
Redirect 723
Recross 727
Redirect 728

Hal C. Byrd:
Direct 729
Cross 748

PAGE

T. D. Truluck:
Direct 753
Cross 762
Redirect 766
Recross 768

Harry Defore:
Direct 771
Cross 782

Sterling L. Smith:
Direct 783
Cross 820

Russell Hudson Bush:
Direct 824
Cross 831

Robert W. McCullough:
Direct 833
Redirect 864

Charles Gibbs Johnson:
Direct 866
Cross 916
Redirect 923

William R. Phillips:
Direct 927
Cross 947
Redirect 965

[1] BEFORE THE

National Labor Relations Board

ELEVENTH REGION

In the Matter of: DARLINGTON MANUFACTURING COMPANY, and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO	Case No. 11-CA-1071

Court Room,
U. S. Court House,
Florence, S. C.,
January 15, 1957.

Pursuant to notice, the above-entitled matter came on for hearing at 1:00 o'clock p. m.,

BEFORE:

LLOYD BUCHANAN, ESQ.
Trial Examiner, National
Labor Relations Board,
Washington 25, D. C.

APPEARANCES:

JOHN M. DYER, ESQ.
For General Counsel,
1831 Nissen Building,
Winston-Salem, N. C.

MAX ZIMMY, ESQ.
Assistant General Counsel,
Textile Workers Union of America,
99 University Pl., New York, N. Y.,
for Charging Party.

BOYD E. PAYTON
BRUCE E. DAVIS
Southern Director,
Int'l Representative,
Textile Workers Union of
America, 110 W. 6th St.,
Charlotte, N. C.,
for Charging Party.

[2] PRICE & POAG
Attorneys at Law,
101 Lawyers Building,
Greenville, S. C., for
Respondent Darlington
Manufacturing Company,
Messrs. James H. Price and
James D. Poag appearing.

THOMAS A. WOFFORD, ESQ.
Masonic Building,
Greenville, S. C., appearing
as special attorney for
Deering Milliken Service
Corporation.

* * *

[4] PROCEEDINGS

* * *

[12] BOYD E. PAYTON, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner: Your name? A. Boyd E. Payton.

Q. "E"? A. Yes, "E" is my middle initial. P-a-y-t-o-n".

Q. And address? [13] A. My home address is 4501 Wentworth Place, Charlotte, N. C., and office address is 110 West Sixth Street, Charlotte, N. C.

Direct Examination

Q. (By Mr. Dyer) Mr. Payton, do you have a position with the Textile Workers Union of America? A. Yes, I do.

Q. What is that position? A. Southern Director.

Q. Now what does that position entail? A. The Southern Director is responsible for the supervision of all activities of the Textile Workers Union of America in those states below Virgina called the "Deep South", having to do with the operation of the established local unions and direction of some fifty-seven organizers who are engaged in organization of new locals.

Q. In that capacity do you receive reports from your organizers? A. I receive regularly each Saturday a written report, it arrives in my office each Monday morning, and in addition to that I receive telephone reports almost daily when campaigns are active.

Q. Now do you appoint persons to the campaigns? A. Yes.

Q. Was a campaign ever initiated at the Darlington Manufacturing Company? [14] A. Yes.

Q. Who was in charge of that campaign? A. Lloyd Gossett.

Q. Did you receive reports concerning the campaign? A. Yes.

* * *

Q. And the question is when did you start your campaign? A. During the month of March, 1956, but the organizer was not assigned until April 23rd.

[15] Q. (By Mr. Dyer) Were union meetings held during this campaign? A. Yes.

* * *

[17] Mr. Dyer: At this time General Counsel proposes the following stipulation: That on May 22, 1956, Boyd E. Payton, Southern Director for Textile Workers Union of America wrote a letter to Darlington Manufacturing Company requesting recognition and claiming a majority and asking for a bargaining conference. Following this letter, Boyd E. Payton, Southern Director, filed a Petition on May 23, 1956, for all production and maintenance employees at the Darlington plant.

Trial Examiner: That is May 15th?

Mr. Dyer: May 23rd. Following the Petition a notice of representation hearing was issued by the Regional Director of the Eleventh Region, and a hearing was subsequently rescheduled and then on a subsequent date, the 8th of June, the notice was changed and the place of hearing was again issued, and that finally a hearing was held on June 19, 1956; following that, the Board on August 24, 1956, issued a decision and direction of election for the unit which has been set forth in the Complaint; the election was held on September 6, 1956, at Darlington Manu-

facturing Company; the certification on conduct of the election was signed by representatives of Darlington [18] Manufacturing Company, and by the Textile Workers Union of America; a tally of ballots was prepared which stated that out of an approximate number of eligible voters of 523, 5 votes were voided, 258 votes were cast for the Petitioner, 252 were against, or a total of 504 ballots, valid votes were counter and four were challenged. The tally of ballots was signed by J. D. Poag, as attorney for the Respondent, and by Boyd E. Payton, Southern Director of Textile Workers Union of America.

Following the election, Respondent protested the election on various phases, the protest was filed by attorneys Price and Poag on the 11th day of September, 1956. Following the statement of protest, a report on objections was issued by the Acting Regional Director of the Eleventh Region on October 8, 1956, the Acting Regional Director's report on objections ruling that the objections be dismissed. On October 24, 1956, the National Labor Relations Board issued a supplemental report and certification of representatives which certified the Textile Workers Union of America as bargaining agent for the employees at Darlington Manufacturing Company. That is my proposed stipulation.

Mr. Poag: We have no objection.

Mr. Zimny: No objection by the Union.

* * *

[19] Mr. Dyer: It is further stipulated that Respondent did not produce any witnesses in support

of objections to the election since at the time of the investigation there was a recommendation from the Board of Directors of the Darlington Manufacturing Company that the plant be liquidated.

Mr. Poag: May I say this to clarify Your Honor's mind. Under the procedure of South Carolina, the Board of Directors meet and make a recommendation to the stockholders in the event of a liquidation and dissolution of the business. This meeting referred to by counsel for the Board was held by the Board of Directors on September 12th at which time they adopted a recommendation to the stockholders that Darlington Manufacturing Company go into liquidation and dissolve. Further, under your procedure we are required to give thirty days notice of a meeting of the stockholders for the purpose of considering a recommendation of the Board of Directors. That notice was duly given and the meeting was called and held on October 17, 1956, at which time the stockholders voted to adopt the recommendation of the Board of Directors. So that it was during the interim that this objection to the election was initiated and had and it was for the reasons which I have just outlined, Your Honor, that the company wrote Mr. Magruder that it was not in position to offer any witnesses on that question.

Trial Examiner: I missed one point, the meeting of stockholders was held when?

[20] Mr. Poag: October 17th.

Mr. Dyer: I stated that Mr. Poag stipulated my stipulation, and that his remarks are a further explanation.

Mr. Poag: That is correct.

Mr. Dyer: Mr. Zimny, do you stipulate to my last statement?

Mr. Zimny: Yes.

Q. (By Mr. Dyer) Mr. Payton, following the election which has been stipulated was held on September 6, 1956, did you have any contact with the Respondent or the Respondent's attorneys? A. Yes.

Q. When was that contact? A. I think it was two days after the election which would have been the 8th.

Q. And what was the nature of that contact? A. I called Mr. Poag, attorney for the company, and asked if it might be possible to set up a conference with he and Mr. Milliken for the purpose of discussing terms of a contract.

Q. Go ahead and elaborate on the conversation and tell everything you recall about it? A. Mr. Poag said that he saw no point in such a conference because the company was protesting the election, and until such time as we were actually certified he saw no point in arranging any meeting. "If and when you are certified you may contact me again and we will consider setting up such a meeting at that time".

* * *

[22] Q. (By Mr. Dyer) Mr. Payton, it has been stipulated that the Board issued a supplemental decision of certification on October 24, 1956, did you receive a copy of such report? A. Yes, I did.

Q. Did you take any action following receipt of that report? A. Yes, I sent a telegram to the company asking for a bargaining session.

* * *

[24] Q. (By Mr. Dyer) Mr. Payton, following your telegram and letters, did you ever have a meeting with Respondent or Respondent's attorneys? A. Yes, we did.

Q. What was the date of that meeting? A. November 7th.

Q. 1956? A. Yes, 1956.

Q. Where was the meeting held? A. In the company offices in Darlington, Darlington Manufacturing Company.

Q. Who attended the meeting? A. Representing the company were Mr. Poag, Mr. Price, Senior, Mr. Price, Junior, and Mr. Oeland and Mr. Goodwin. Representing the union was myself, my assistant, H. S. Williams, Mr. Gossett, [25] the committee of workers, five workers from Darlington former employees.

Q. How long did the meeting last? A. About an hour.

Q. Can you tell me what took place at that meeting? A. Well, the conference was opened by asking the possibility of exploring, somewhat to explore the possibility of keeping the plant in operation, we said that we wished to assure the company that we wanted to cooperate in every way possible to get the plant back in operation. That was the major concern. A lot of discussion was had about the liquidation, the decision to liquidate. I asked the company if it was the fact that the employees had voted for union representation that had caused the company to make this decision. Mr. Poag said that this action by the employees caused the company to reappraise the situation, but that there were other reasons for the company's decision to liquidate. We asked the company for information concerning the wages, wage scales, wage schedules, so called fringe benefit practices such as what is your vacation policy, what is your holiday policy, whether or not you have any incentive plan in effect, and the company took the position that they saw no point in furnishing that information to the union since the decision had already been made to liquidate the plant and that decision was irrevocable. We [26] had

some discussion about the unfairness of the company's decision to sell the plant first as a whole as a going concern, and then as a piece-meal operation. We said that we were concerned about that, we thought it would be better if they could be induced to sell it at auction piece-meal first and then any company that was concerned about having the mill in operation as a whole would know what price they had to meet in order to have a plant in operation. Mr. Poag said that the decision had been made to do it the other way around, and that the company was only concerned about the highest possible dollar, whatever way they could get the highest dollar out of the sale was the big concern of the company. We kept coming back to this question of wage scale, and asked the company several times if they had a typewritten copy of their wage scale. They said they did not have a copy to give us but that rates were posted in the mill. We tried then to get the individual rates, we asked "what is your fixers rate", Mr. Goodwin said "Why did you not ask the fixers you have on your committee. He can tell you what his rate is." We asked what the weaver's rate was, and Mr. Goodwin said gain, "Why did you not ask the weaver on your committee, he can tell you what his rate is". We asked—we had some discussion about what the minimum wage was, Mr. Poag said that he thought the company could assure us that the wages including the minimum were equal to competitive mills of [27] the company. At one point Mr. Oeland asked why the Union did not buy the plant. I replied that the Union was not in the business of operating textile mills, we considered that management's function and were not in the business of operating textile mills. Prior to the conference we had asked the company for information concerning the date that employees had been terminated, the names of employees

remaining on the payroll, and I believe some other information concerning the present operations at the plant, and I asked Mr. Poag if he had that information, and he said he had not prepared it but could advise that there were some seventy-five employees still working on that day, but they would be finished within a week, was his information, and in view of that fact he saw no reason to furnish us with the information we had requested in regard to wages. But using a number of questions we did secure at that conference the company's vacation policy, the holiday policy, we were informed that there was an incentive system in effect, and some other details having to do with fringe benefit policies of the company.

Q. Was there anything in the conference mentioned concerning contractural proposal? A. Mr. Poag said that he had expected us to come to that conference with a contract proposal, and I asked him how he expected us to prepare a proposal when we had not yet received [28] the information concerning wages and fringe benefits, how could we determine whether we were going to ask for a wage increase or not when we did not know what the present rates were. How could we determine what our vacation proposal might be when we did not know prior to that time what the present vacation plan was and so on down the line. And then I concluded by saying even so, presentation of a contract proposal it seems to me would be pretty empty in view of the fact that the company has announced plans to liquidate, and "you have told us that those plans cannot be changed, that decision is irrevocable."

Q. Since the time of that conference have you had any contact with the company or the Respondent's counsel? A. I believe since that time the company has written to us.

Q. Just a few minutes ago I introduced certain letters and exhibits, one was dated November 26, 1956, addressed to J. M. Oeland from you? A. Yes, that is right. On November 26 we renewed our request for information concerning the company's wage scale, schedule, vacation policy, etc.

Trial Examiner: When was that?

A. November 26.

Q. (By Mr. Dyer) That would be General Counsel Exhibit No. 2-(g). You received a reply to that? A. Yes, Mr. Poag replied.

[29] Q. The two, or three letters, General Counsel Exhibits Nos. 2-(g, h and i) are the only contact that you had with the Respondent since November 7? A. Yes.

Q. There has been no other? A. No.

* * *

Trial Examiner: On the record. Before you resume, Mr. Dyer, in reference to the number of people I think it would be helpful if we identified each of them on the record. Say Price, Senior, and Price, Junior.

Mr. Dyer: I can probably make that identity with Mr. Poag's agreement. Mr. Price, Senior, is counsel for the Respondent of the firm of Price & Poag.

Trial Examiner: I am sorry, I was thinking in terms of committee representatives. Price, Senior and Price, Junior, are counsel?

Mr. Poag: Yes, the only correction would be Mr. W. B. Price, and not Price, Junior.

Mr. Price: Your Honor, we have three "Prices" we can give, high, low or any kind you want.

Colloquy

Mr. Dyer: Mr. Price, Senior, and Mr. Poag are counsel for Darlington Manufacturing Company, Mr. Goodwin is production superintendent for Darlington Manufacturing Company [30] and Mr. Oeland is treasurer and general manager of the Darlington Manufacturing Company. I think that clears them all. And Lloyd Gossett has already been identified as an organizer.

Trial Examiner: All right, think you.

Mr. Dyer: Mr. Examiner, at this time we would like to propose a stipulation that pursuant to notice placed in the papers by the Respondent or by Respondent's auctioneering firm, an auction was held of the Darlington Manufacturing Company, and the plant was sold as a whole first, on December 12, 1956, at that time there was only one bid, the bid was for $1,600,000 for the plant as a whole. Following that——

Trial Examiner: That was what date?

Mr. Dyer: December 12. Following the auction as a whole, the plant and various properties such as machinery and all were offered piece-meal and——

Trial Examiner: Was that the same day?

Mr. Dyer: The same day and the following day, December 13, 1956, and that the bids on piece-meal including the building was in excess of $1,850,000, subject to adjustment for weights, counts and measures if there proved to be any deficiency.

Trial Examiner: The record notes that stipulation.

* * *

[36] Q. Now Mr. Payton, I will ask you next a particular question of the meeting held in the office at which you said we were all present, did you notice during the discussion that I was taking short hand notes? A. Yes, I did.

Q. Of what was said? A. Yes Sir.

* * *

[37] Q. Now about one statement there in the conversation, do you remember Mr. Poag turned to you and said, "Mr. Payton, I would like to ask what is the basis of this charge against the company for failing to bargain," do you remember that question? A. Yes Sir.

Q. Did you say that "I frankly do not know, I am not sure what the basis is, that there are so many press persons getting in here it is hard to know just where we stand, I think that everybody got into it". Do you remember saying that? A. Yes, something to that effect.

* * *

[43] Q. I will ask you this further. On the 3rd of November—on November 7th, did we adjourn there at about 11 o'clock without any particular date being set but we said that we would, Mr. Poag assured you that we would be willing to meet back any reasonable time, did he? A. Yes.

Q. You never asked for another meeting, did you? A. No Sir.

* * *

Redirect Examination

Q. (By Mr. Dyer) Mr. Payton, during your meeting on November 7th, with the company and Respondent's attorneys, you said that, you stated in your prior examination that you asked for certain information? A. Yes, that is right.

Q. Did you ever ask again for such information? [44] A. Yes.

Q. And how did you do that? A. By letter of November 26.

Q. That is the letter that has been stipulated to in evidence? A. Yes.

Q. Did you ever get any information from the company?

Trial Examiner: You are referring to which letter?

Mr. Dyer: General Counsel 2-(g).

Trial Examiner: Thank you.

Q. (By Mr. Dyer) Did you ever receive from the company any information regarding the request that you asked? A. No.

* * *

[54] JAMES P. MOZINGO, III, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. And your address? A. 117 North Main Street, Darlington, S. C.

[55] *Direct Examination*

Q. (By Mr. Dyer) Senator Mozingo, what particular body are you senator in? A. South Carolina State Senate.

Q. In what territory do you represent? A. Darlington County.

Q. Now what is the seat of Darlington County? A. Darlington, S. C.

Q. Sir, are you a member of the Bar of the State of South Carolina? A. Yes Sir, I have been a member of the Bar since 1936, and have been in the Legislature 22 years and was elected in 1935, and elected to the Senate in 1938.

Q. Do you have a law practice? A. Yes.

Q. Where is that practice? A. In Darlington.

Q. Now Senator, did you attend a meeting of the stockholders of Darlington Manufacturing Company which was held on October 17, 1956 in Darlington? A. Yes sir, I did.

Q. Where was that meeting held? A. It was held in the offices of Darlington Manufacturing Company on, I guess I am correct, on the lower end or Orange Street in a building that was occupied by Darlington Manufacturing Company.

[56] Q. Do you recall what time that meeting was held? A. No Sir, I do not. I know I was about late and I went by Mr. Henry Simpson's and Mayor Buchanan's but I think it was at 10 o'clock, I am not sure, I believe it might be 11. I am not positive.

Trial Examiner: What was the date?

A. October 17, 1956.

Q. (By Mr. Dyer) Were you there prior to the start of the meeting? A. For about five minutes, I went straight in there and then just long enough to shake hands with the other members present and around the room and sit down.

Q. Are you a stockholder in Darlington Manufacturing Company? A. No, I am not.

Q. In what capacity did you attend this meeting? A. I had a proxy that was given to me by Mr. Simpson, the proxy stock belonged to Belk's Department Store of Camden, S. C.

Q. And you attended? A. I attended with that proxy.

Q. Now did you go to the meeting by yourself? I think you said you went with some other? A. No, I got a telephone call from the Mayor, Mayor Buchanan, that Mr. Simpson was at his place of business, which is a jewelry store located up town and they were waiting on me to [57] go to the stockholdesr meeting.

* * *

Q. (By Mr. Dyer) Senator, did you attend the meeting with these individuals you named? A. Yes.

Q. Where did you sit in the meeting? A. I sat nearest the door where I could get out if necessary. I sat nearest the door, and you understand I had never been in the office before, and sat in the seat next to the door as I understood they were going to have a directors meeting afterward, and I wanted to of course leave before that.

Q. Who were you sitting nearest? A. I sat next to Mr. Buchanan, he sat on my right and Mr. Ted Coggshall next to him and I believe——

Trial Examiner: Who is that?

A. Mr. Ted Coggshall, and I am not sure, Mrs. Oeland was sitting on that side, I did not know her at that time but that is who she was, and Mr. Simpson sat over there and Mr. Poag I believe sat in the same relation on down this side, [58] and I did not know some of the other gentlemen but I did know Mr. Poag.

Q. Was Mr. Milliken, Roger Milliken present? A. He sat, Mr. Oeland was sitting at a desk in the room and Mr. Milliken sat on what would be Mr. Oeland's left facing towards us.

Q. Now who opened the meeting? A. Mr. Milliken is my recollection.

Q. Can you tell us in your own words the events that took place that you saw and heard at that meeting?

* * *

A. The meeting was called to order by Mr. Milliken, and the statement was made by him that on September 6, when they voted for a union that he decided to close the mill. He then [59] said that he had a prepared statement that he began reading from, all of which I took notes on and I recall these words very clearly that "We are going to reexamine the situation there", because it would not allow them to be placed in a competitive position with other mills. The other point he made in there was that the Japanese situation had been rather bad on textile mills, and that he believed that he could take the money and place it in three percent tax exempt bonds and do better with the money, he said the mill had only been paying a three percent dividend. I made notes of those because I intended to reply to his argument, and that pretty well sums up in general what I had on his prepared statement. He said the majority indicated it would not be willing to get below the cost and "we decided to no longer operate." Then he said that some other industry would probably be attracted there. When he finished speaking, I got up and made the statement that I realized that I was in this position, something that I would not particularly want to do for myself but that there was a great many people out of a job and that we were appearing there in all humility to ask him to continue the mill and to continue it to give these people employment, most of whom knew no other trade and most of them who have given their lives working for the mill, and I thought as far as the Japanese action was concerned, that the relief that they had gotten in Congress so far had come a [60] great deal from the fact that certain Congressmen thought that it was

affecting the laboring people as much as it was affecting the employers themselves, and I believed it was a bad thing for him to do. As far as unionization was concerned, I said "I would like to call to your attention that in Darlington there have been other votes for union and Dixie Cup did not vote for a union, however", I said, "Bennettsville has long had a union", and Mr. Simpson said some, made some remark about the Marlboro Mills had a union. On the three percent situation, I made this observation, that he probably was not interested in paying dividends anyway because three percent would do him very little good with the wealth he had, that what he was trying to do was put the Darlington Mills in liquidation and take a long time gain and thereby make a capital gain against a low ordinary income, I believe that about sums up what I had to say, all of which did no good. He asked if there was anything further, and then I got back up and said, "Yes, there is something further, as far as my personal feeling about it," I said, "This is a very sad day for Darlington and I think you are making a great mistake", I said, "As a member of the Senate and a member of Darlington we are going to long remember it and I don't believe that anyone has ever prospered over taking jobs because unemployment and hunger among people with all of the forty million dollars you have, some time I think it will come back and haunt you," and I think it will.

[61] Q. After that discussion was there any other discussion? A. Yes. Mr. Poag and I believe Mr. Henry Simpson made a few remarks, and I made the observation to Mr. Henry Simpson that I had probably said some things, that I did not want to embarrass him who was probably a friend of Mr. Milliken, and he had a proxy that he had given to me and that I wanted him to know

that I had promised him that if there was anything said that might embarrass him or anything like that I was willing to give up the proxy as far as voting was concerned. Mr. Poag then asked me if I wanted to turn in a proxy, and I think I turned to Mr. Simpson and told him that I would leave that up to him, and I believe he said no, it was all right. I think we got beat 134,000 and something to 130,000, I don't remember the tally on it. Immediately after that Mr. Milliken said he would like to see Mayor Buchanan and myself, and we stepped outside and there is an enclosure there right off from the door——

Mr. Price: Your Honor, any remarks that were said outside not in the stockholders meeting we object to.

Mr. Dyer: Let me stop you at this point, Mr. Mozingo, did you have any conversation with Mr. Milliken on October 17, 1956?

A. I had one with Mr. Milliken in the presence of Mayor Buchanan. Mr. Milliken asked us to come out, said there was something he wanted to tell us.

[62] Q. Did you go outside? A. We did.

Q. And did you have a conversation with Mr. Buchanan present with Mr. Milliken? A. We did.

Q. And will you tell what that conversation was?

* * *

A. We stepped out of the office and around to the right hand side going out of the door, there is an enclosure there, no one was working there, Mr. Buchanan, Mr. Milliken and myself went in there, and he told us that he thought that it was going to be——

Trial Examiner: By he?

A. Mr. Milliken told me, he said, "I think you are rather unduly alarmed about this, this is going to be the best thing that ever happened for Darlington", and I said, "How can you say that it will be the best thing that ever happened to Darlington when people are going to be put out of a job, people [63] are going to be hungry," I said, "That is absurd". He said "Well, it happened in Huntsville, Alabama——

* * *

[64] Mr. Price: Your Honor, that goes into the Huntsville, Alabama, situation, that would call for evidence from our side if it was hurtful about what happened.

A. Your Honor, I am not going into Huntsville.

Trial Examiner: Well, apparently we agree that we are not going into the Huntsville situation and there has been some reference to it, perhaps the witness can go on without further reference to Huntsville and tell us about the matters which do concern this hearing.

A. I said, "I know nothing of the Huntsville matter at all," he said, "Well, you will probably get another industry here in Darlington", and I said, "How do you expect us to get another industry when you are leaving a stigma on us here that can't be erased." I said, "Not only that, it is unfair because eighty-three percent of these people I am told have signed a petition to go back to work, eighty-three percent of them have signed a petition to go back to work", he said, "As long as there are seventeen percent of the hard core crowd here I refuse to run the mill."

* * *

[65] *Cross Examination*

Q. (By Mr. Price)

* * *

[67] Q. You said a few minutes ago that Mr. Milliken opened the meeting by reading a statement? A. Yes, after some preliminary remarks.

Q. Did he or not, will you let me read this statement and see if that is your recollection of what he said: (reading)

> "The action of the employees in selecting the union as their bargaining representative indicates unwillingness on their part to cooperate in the plan of modernization. This makes it necessary for the Board of Directors to immediately appraise the whole situation. The Board considered the facts that the stockholders have a very substantial sum of money invested in the business; that the operation of the business has produced approximately only three percent return on their investment; in the past five years; that they might well take their funds out of Darlington and reinvest them in tax exempt bonds which would give them a higher return on their investment without any risk; that in [68] order to modernize the mill, it will be necessary for the stockholders to spend in excess of a million dollars within the next few years, and the Japanese import situation and other factors make the future of textiles uncertain and unpredictable; that the directors could not foretell what the earnings would be or that they would justify this additional outlay of capital for this business for economic reasons; the Board recommends liquidation".

Q. Is that approximately what he said? A. That is the statement he read, yes.

Q. Now I believe you said you did not have any stock in the mill at all yourself? A. No Sir. If I may explain that, I tried to buy some.

* * *

Redirect Examination

Q. (By Mr. Dyer) Senator Mozingo, in the last part of my direct examination of you, you made the statement, "He said, 'As long as there were seventeen percent' ", who was he you referred to? A. Roger Milliken.

[69] Q. Just to make it clear, what was it? A. He said, I said "I understand 83% of the people have signed a petition to go back to work whether they have a union or not", he said, "As long as there was 17% of these hard core labor people here, I refuse to operate the mill". That is his statement. That is the statement Roger Milliken made.

* * *

Q. (By Mr. Dyer) Mr. Mozingo, I believe you said there were some preliminary remarks prior to the reading of this statement? A. Yes, there was.

Q. Did anyone attempt to write those remarks down? A. I did.

* * *

[74] Mr. Dyer: I call Mr. James M. Oeland as a witness under Rule 43-B.

* * *

[75] *Direct Examination*

Q. (By Mr. Dyer) Mr. Oeland, do you have any position with Darlington Manufacturing Company? A. I am treasurer of Darlington Manufacturing Company.

Q. Do you have any other position besides that of treasurer? A. I was general manager.

Q. Pardon? A. As treasurer and I was general manager.

Q. You are general plant manager? A. Yes.

Q. And in that capacity you ran the plant, is that the idea? A. Yes, that is right.

Q. Now how long were you treasurer and general manager of the plant? A. From August 1, 1951.

Q. Until when? A. Until the present time.

* * *

[83] Q. Were any general increases or raises given during the time you were manager of the Darlington Manufacturing Company. A. Yes.

Q. And who initiated the general raise or increase? A. I did.

* * *

[84] Q. Did you need any particular authority from any officer of the corporation to make those raises? A. No.

* * *

[90] Q. (By Mr. Dyer) Mr. Oeland, in addition to your past years as treasurer, are you also secretary of Darlington Manufacturing Company? A. Yes.

Q. And you are a member of the board of directors? A. Yes, that is true.

Q. Now is it the practice to hold annual stockholders meetings? [91] A. Yes.

Q. And when are the stockholders annual meetings held? A. Usually held in January of each year.

Q. And was one held in January 1956? A. Yes.

Q. And were minutes taken of that stockholders meeting? A. Yes.

* * *

Q. (By Mr. Dyer) Now according to that the annual stockholders meeting was held then on January 17, 1956? A. Yes, if that is the date on there.

Q. And you were present at that time? A. Yes.

* * *

[92] Q. Now during the stockholders meeting was there any discussion concerning modernization of the plant and facilities of Darlington Manufacturing Company? A. Yes. Correction, I don't remember that there was at the stockholders meeting. The Directors meeting was held the same day and usually matters of that nature were for the directors rather than the stockholders.

Q. Were you a director at that time? A. Yes.

Q. Did you attend the directors meeting? A. Yes.

Trial Examiner: Directors meeting on January 17?

A. Yes.

Q. (By Mr. Dyer) Was the directors meeting held directly after the stockholders meeting? A. Yes.

Q. At that directors meeting was there discussion on modernization and purchase of new machinery and new facilities for the plant? A. At that meeting, it usually was discussed and I feel sure that some discussion was made of the plant to the officers of the company for some changes, purchases of equipment.

Q. And did the Board of Directors authorize purchases of new machinery and equipment at that meeting? A. I would have to refresh myself on the minutes but it was usually they did at least the officers presented to them [93] their plans. They were not always going to do this actually but discussed the plans for the next year.

Q. How many directors were there at that time? A. There was seven directors at that time.

Q. And most of the directors were in fact officers of the plant were they not? A. No, only Mr. Milliken and myself were officers of the plant.

Q. Mr. Milliken and yourself were the only ones at that time? A. Yes. I beg your pardon, I am not, I believe, I beg your pardon, Mr. Cabel of New York I believe was the assistant treasurer as I remember, and maybe Mr. Hatch was the vice president.

Trial Examiner: What is that last name?

A. Mr. Hatch, "H-a-t-c-h".

Q. (By Mr. Dyer) And that would be four of the seven directors of the Board of Directors were officers of the corporation? A. Mr. Cabel was not a director.

Q. Did he later become a director? A. No.

Q. Was he present at the Board of Directors meeting? A. No.

* * *

[94] Q. Now had there been a program of modernization going on at Darlington for a period of time? A. Each year we tried to make improvements and modernizations to keep up with the competition.

Q. Can you tell us what some of the improvements were during the past say two years? For instance was new pneumagil equipment installed at Darlington Manufacturing Company within the last two years? A. Yes. P-n-e-u-m-a-g-i-l.

Q. And also some pneumagil equipment was being installed right up as recent as September of this year? A. Yes.

Q. Was not a new elevator put in the plant in, very recently? A. I believe the elevator was on the exterior of the building.

Q. Was that put in very recently? A. There was a conveyor put in one time, put in to convey the warper beams to the slasher room.

Q. Well, the conveyor is actually an outdoor elevator, is it? A. No. To my thinking it is a conveyor, it runs automatically, the elevator usually requires somebody to be present [95] to operate it.

Trial Examiner: When was that put in?

A. Last year in 1956.

Q. (By Mr. Dyer) And some air conditioning equipment was installed during 1956? A. We had change of equipment, it was renovated, I don't remember any new installation.

Q. And the company purchased new looms, 80 new looms, did they not? A. Yes.

Q. And when was the purchase order given for those? A. As I remember it was last February, 1956.

Q. February 1956, 84 new looms were ordered by the company? A. Yes.

Q. On whose authority? A. On my authority.

Q. On your authority? A. Yes.

Q. When were these looms delivered? A. Yes.

Q. When were they delivered? A. As I remember it was in August, several car loads came in there over several weeks.

Q. Now can you tell us what the cost of these new looms was or for each would be? I understand there was 84, is that correct? [96] A. As I remember counting the delivery and auxiliary equipment, etc., it ran better than $1500 a loom.

Q. Now where were you planning to place these new looms? A. We moved the supply room from the area where it had been occupying and planned to extend the lower weave room.

Q. In other words you moved the supply room and you were making an addition to the lower weave room in which to put these new looms? A. No, not an addition. We were just taking the same space, preparing it for the installation of looms.

Q. When you say the same space, you say you also moved the supply room? A. Yes, I said we moved the supply room. You said an addition, my understanding of an addition is to add something to the building, I am trying to clarify the point that it was not an addition, but an additional space within the plant in which to put these new looms.

Q. In other words you moved the supply room to make space for the new looms? A. Yes, that is right.

Q. Did you order some new bobbins in 1956? A. Yes.

Q. What do you mean by bobbins? A. Bobbins for your spinning frames.

Q. Well, filler bobbins? [97] A. Yes. They were second hand.

Q. How many new bobbins or new second hand ones did you order? Was it 50,000? A. Yes, I would say yes.

Q. And you ordered new——

Trial Examiner: Over fifty thousand?

A. Yes.

Q. (By Mr. Dyer) You ordered some new warper beams? A. Well, to explain we put on a larger warper beam in certain looms. It is not a warper beam but rather a loom.

Trial Examiner: Put on?

A. Yes, on certain looms.

Trial Examiner: Put on what?

A. On looms, replacements.

Q. (By Mr. Dyer) Were these loom beams smaller or larger, the ones presently on the equipment? A. Larger.

Q. What other equipment was ordered, or on order lets say in June of 1956? A. I don't remember that, all the equipment that we had ordered as machinery change was delivered except for the contract for the new pneumagils, certain part of the pneumagils was not delivered.

Q. When you moved the supply room there were structural changes that had to be made in the building, were there not? A. Yes, not structural changes but just renovation.

[98] Q. Did you have an outside contractor in there doing some of the changes? A. No, we did it with our own help.

Q. Did you have any type of contract with any outside construction company in regard to the moving of the supply room? A. I think we bought some steel bins that were supposed to be put up but we bought them put up. Other than that we did everything ourselves.

Trial Examiner: Was that steel beams?

A. Bins, "B-i-n-s".

Q. (By Mr. Dyer) You had a number of steel bins to be installed too, did you? A. I don't know what you are talking about. We had some aluminum Walker beams that had not been installed.

Q. I am talking about steel beams, construction beams? A. That was in the renovation of the lower part of the weave room, yes.

Q. Who was doing that work in renovation? A. That was being done by an outside contractor.

Q. It was being done by an outside contractor? A. Yes.

Q. Was that renovation ever completed? A. No.

Q. When did it stop? [99] A. It was stopped soon after the directors meeting, of September 12th.

Q. It was stopped before or after? A. After.

Q. Afterwards? A. Yes.

Trial Examiner: You said directors meeting of September 12th?

A. Yes.

Q. (By Mr. Dyer) Mr. Oeland, when did the fact that the union, the Textile Workers Union of America organizational campaign at Darlington first come to your attention? A. I think it was the organizational letter that somebody handed to me and I am not certain of the date.

Q. Pardon? A. It was early in the spring of 1956, I am not certain as to the date.

Q. In any event it was in the spring time of 1956? A. Yes.

Q. Whom did you notify of the union organizational campaign? A. At or about that time I called Mr. Roger Milliken.

Q. And you informed him that the union was attempting to organize the plant? A. Yes.

* * *

[108] Mr. Dyer: Mr. Examiner, at this time General Counsel would like to offer a stipulation that all of the persons named as supervisors in the Complaint are supervisors with the exception of Mrs. McPharland, are supervisors within the meaning of the Act. I understand that Mr. Poag will so stipulate. That raises the question of the supervisory

status of Mrs. McPharland. Mrs. McPharland's name appears in only one paragraph, that is Paragraph 12 on Page 4.

Trial Examiner: The stipulation is that all persons except Mrs. McPharland who are named supervisors or agents are in fact supervisors within the meaning of the Act?

Mr. Dyer: Yes.

Trial Examiner: Is that so stipulated?

Mr. Poag: Yes.

Mr. Zimny: Yes.

Q. (By Mr. Dyer) Mr. Oeland, I think we can arrive at some value for the looms, can you give an idea of the pneumagil installation, done by your people or was it being done on an outside contract? A. The outside, I mean the duck work, we bought that installed, the actual application of the parts on the spinning frames was done by our help under the supervision of a man sent there by the people that we bought them for.

Q. Was this contract a contract for a short time or a contract for quite a lot of pneumagils? [109] A. Well, there was several installations.

Q. Were there several different contracts with several different installations? A. Yes.

Q. Can you give the value of the contract for lets say the duck work? A. The value of the contract, what is that?

Q. For duck work? A. No, we bought it installed, they furnished it. We bought that part installed, that was in the contract.

Q. Can you give us the value of the contract for the pneumagil that was installed and for the parts? A. As I remember it was about $80,000.

Q. Was that for just one contract or for a series of installations? A. I think that was for the last contract.

Q. That was just for the last installation? A. Yes.

Q. And that installation was to be made in 1956? A. Yes.

Q. And that installation was being made at the time of the election on September 6, was it not? A. Yes.

Q. But there had been prior installations of pneumagil equipment?

[110] Q. Can you give us for the sake of the record— A. I did.

Q. What pneumagil equipment is? A. On a spinning frame there is a clearer we call it that goes up under the spool so that when the end breaks down, it catches the cotton coming through and wraps it around this clearer in order not to keep it from going all over the place, and perhaps knocking down other ends.

Q. This installation does away with that revolving clearer? A. It is an air suction put in to draw that cotton down into a duck and collect it all at one end of the frame or at certain points.

Q. In other words it is more or less a waste collector? A. No, it is a waste collector but it is cotton that you can use again.

Q. Would it be cotton that just collects on the frames and is taken off of the spinning frames at that time and is returned to a spot where it could be subsequently reused? A. Yes, that is right.

Q. And I think you said there were about three or four installations altogether? A. As I remember we did one installation, the first we tried was in the Whitin room on the 27 frames, and then the next installation was in the upstairs spinning room on filling for 32 frames, it could have

been 48, either two [111] or three, and the last one we were in the midst of installation for the balance of the spinning that we had.

* * *

Q. (By Mr. Dyer) And approximately how many spinning frames would that be? A. 128 as I remember.

Q. Now 128 was the balance? A. No, the entire mill.

Q. Well then, the other two installations——

Trial Examiner: 128 what?

A. For the entire mill?

Trial Examiner: We are speaking of what? 128 frames?

Mr. Dyer: Yes. Then that last installation was for about half of the total that had been done before, is that right?

A. No, it was for more than that.

Q. More than half? A. Yes.

Q. You don't remember the contractor's price for the total? A. Yes.

Q. It is reasonable to assume that they would be in the neighborhood of $80,000? A. Yes.

Q. Now can you give us, you said there was an outside contract for some of the work being done in the expansion of the weave room? [112] A. Yes, that is right.

Q. What was the value of that contract? A. As I remember it about $35,000.

Q. When was that contract let? A. It was let some time as I remember around June.

Q. June of 1956? A. Yes, that is right.

* * *

Q. But you had some ideas of your own for further expansion or modernization of the plant? [113] A. Yes.

Q. In which direction, was it modernization of the weave room or what? A. No, it was additional spinning frames.

* * *

Q. When did you first learn what the tally of ballots was? A. Somebody that was present came to the office and told me about it.

* * *

[114] Q. (By Mr. Dyer) Mr. Poag then told you that the union had won the election by 256 to 248? A. Yes.

Q. And did you call Mr. Milliken then and tell him that? A. I could not get Mr. Milliken until the next day.

Q. Until the next day? A. Yes, until the next day about noon.

Q. And where did you reach him the next day? A. In Spartanburg.

Q. And you told him of the outcome? A. Yes.

Q. Do you know whether you were the first to tell him of the outcome of the election? A. As I remember I think Mr. Poag had contacted him before I did.

* * *

[115] Q. When did he first tell you that he was going to call a special Board of Directors meeting? A. He told me Monday,

* * *

A. He called me actually as I remember on Monday and told me that they were going to have a directors meeting.

Q. Was that the first time you heard that there was going to be a directors meeting? A. Yes, that is right.

Q. And that would be Monday, September 10? A. Yes.

[116] Q. And what is the regular method of calling a board meeting? A. We try to give a notice, written notice prior to the directors meeting of ten days or two weeks. If we cannot furnish it in a case like that written notice ahead of time then we carry that to the directors meeting and get all the directors to sign what you call it, an agreement.

Trial Examiner: A waiver of notice?

A. Yes, that is right, a waiver of notice.

Q. (By Mr. Dyer) Did you contact the other directors and inform them of the special meeting? A. Mr. Milliken asked me to contact two local directors, which I did.

Q. Do you know who contacted the other directors? A. No, I think he told me in the telephone conversation that he would take care of that.

Q. Well, were you present at the directors meeting that was held? A. Yes.

Q. That was held on September 12? A. Yes.

Q. Where was that meeting held? A. At Drayton Mills office of Drayton Mills, Spartanburg.

Trial Examiner: Office of whom?

A. Drayton Mills, Spartanburg, S. C.

Q. (By Mr. Dyer) In the offices of Drayton Mills?

[117] A. Well, we used the offices for the meeting.

Q. Now when Mr. Milliken called you on that Monday, what time was it he called you? A. My recollection is not clear, I would think, I would have a feeling that it was in the morning but I am not sure. It could have been afternoon.

Trial Examiner: You are speaking of the telephone conversation with Mr. Milliken on the——

Mr. Dyer: On Monday, September 10.

Q. Mr. Milliken at that time told you what the purpose of the special meeting of the board of directors was, did he not? A. No.

Q. What did he tell you about the meeting? Did he tell you what the purpose of the meeting was? A. No.

Q. You did not know when you went there? A. No.

* * * *

[118] Q. Labor Day in 1946 was given as a vacation day was it not? A. Yes.

Q. Who decided to make that a vacation day? A. I decided it, on the recommendation of my supervision.

* * *

[121] Q. (By Mr. Dyer) Mr. Oeland, before lunch hour I questioned you in regard to the September 12 stockholders meeting and I think you stated that you were present, or the board of directors meeting? A. Yes.

Q. You were present at that meeting? A. Yes.

Q. And were minutes of the meeting made? A. Yes.

Q. Who made the minutes? A. I did.

* * *

[122] Q. Now are the minutes that were made of the meeting, are they in time sequence, in other words when you made up the minutes did you make notes of what happened first, second and third, is that the way you made up the minutes? A. I tried to, I tried to take some notes and put them in.

Q. In other words what first appears in the minutes was probably what first came up and then what is next was what came up next? A. Yes, that is the way I have got them.

[123] Q. Now at this meeting a proposal was made for the liquidation and dissolution of the Darlington Manufacturing Company? A. Yes.

Q. Who made that proposal? A. Mr. Roger Milliken, the president.

Q. And did he propose the resolution, I think there was a formal resolution in regard to it, did he propose it? A. Yes.

* * *

[126] Q. Mr. Oeland, approximately how long did that board of directors meeting last? A. Have I got on there when it started?

Q. I notice at the top it says at 12:00 P. M. A. Well, that was, I mean 12:00 P. M. is when it started and as I recollect we were out by 1:00 o'clock.

* * *

[127] Q. Did you receive any instructions regarding liquidation at that meeting? A. Verbal instructions as to what I was to do between the directors meeting and the stockholders meeting.

Q. And from whom did these verbal instructions come? A. Mr. Roger Milliken.

Q. And what were those verbal instructions? A. That I was to take steps to see what could be done to hold up any of the contracts of work that were going on around the wheels but to keep the plant status quo for the final decision of the stockholders.

Q. Well, was any mention made of starting new production or just holding on to the production that was under way at that time? A. It was suggested that we not accept any more orders for cloth or make any more sales of cloth, that we had some on the books that would take up production of the plant during that period.

Q. And at that meeting was it decided when to hold the stockholders meeting? A. Yes, the notice was prepared and went to the paper, the Darlington paper that afternoon.

Q. Were you instructed to inform the supervisors concerning this action? [128] Yes, at least I requested that I be allowed to tell the supervisors about the action of the directors rather than let them pick up the morning paper, I thought they had a right to know it.

* * *

Q. Did you receive copies of various resolutions at the board of directors meeting? A. There was some two or three resolutions taken up.

Q. Did you receive copies of those at the board of directors meeting? A. Yes.

* * *

[129] Q. What about the resolution in regard to dissolution and liquidation? A. That was presented to them at the directors meeting, I had no copy prior to the meeting.

Q. At the directors meeting was a copy of that resolution given out to the various directors present? A. I don't remember that it was, no. It was read of course and discussed but if I remember not given to them.

Trial Examiner: You say it was read?

A. Yes.

Q. By whom? A. I am under the impression that Mr. Roger Milliken read it, that is my recollection, he is the one that discussed it.

* * *

[132] Q. (By Mr. Dyer) Is Mr. Byrd associated with Darlington Manufacturing Company? In anyway? A. He is purchasing agent for mill supplies.

Q. Does he have his own firm? A. No.

* * *

[133] Q. Mr. Oeland, at the time of the election do you know approximately how many employees were on the payroll? A. 523, that could vote.

* * *

Q. And in addition to that there would be some 20 or so supervisors plus ten or fifteen other clerical people? A. Yes, office personnel.

Q. And at that time what was the weekly payroll of Darlington Manufacturing Company at the time of the election?

* * *

[134] A. It was approximately $29,000 was the average for the year.

Q. That is just for the production? A. Yes, the wage employees.

Q. It would not cover supervisors and other clerical people? A. No.

Q. Mr. Oeland, do you recall that I was at the Darlington plant office and we went over some of the figures for the week ending September 1, 1956, was not the number of employees approximately 536? A. Are you asking me to agree with the figures you put down?

Q. That is what I want to find out. A. I cannot exactly agree. Of course the writing was a little bad so I tried to get it, and I think these——

Trail Examiner: Is there some difference?

Q. (By Mr. Dyer) Well, the payroll for 9/1—— A. The payroll for 9/1——

Trial Examiner: Does this have any significance?

Mr. Dyer: Yes, I want to show the gradual cut down in production, and number of employees.

A. You are correct on your record, less second hands as I say we pulled all of ours out and I think that is a difference in the figure, there was 527 instead of 536. You understand that, Your Honor, second hands were carried on the wage payroll but were eliminated from the figures. [135] It was 527, the figure for the week of 9/1/56.

Trial Examiner: The figure 527 excludes second hands, the figure 536 as I understand you to say, Mr. Dyer, includes some second hands? A. Yes.

Q. (By Mr. Dyer) Now the payroll for that week was almost $30,000 was it not? A. My figures for second hands excluded was $29,383.69.

Q. Now gradually following the election, the employment total dropped up until the date of October 17, the date of the meeting? A. We had, yes, my figures show we had from 527 to 512. The election you are talking about? —Q. No, from the date of the election until the date of the stockholders meeting on October 17? A. My figures show there was 512 on there——

Trial Examiner: When?

A. On the week ending November 13. No, October 13.

Trial Examiner: 512?

A. Yes.

Q. (By Mr. Dyer) And what about the week following that? A. The week following that was October 20, 462.

Q. Just give a picture of how the production was cut, all of your figures excluding second hands and anybody that could not vote? [136] A. Well, one or two people in the mill that we had considered questionable but the labor group felt that they were supervisors, I think particularly John Hancock in the shop, we never considered John Hancock a second hand but they felt that he should be eliminated, and then one or two others on the fringe line that——

Q. You are excluding from that—— A. Anybody that they said could not vote.

Q. In other words you are recalling exactly what the Board determination was in the appropriate unit? A. Yes.

Q. And could you give a picture from there on down how the employment tailed off? A. On the week of 10/27, it was 347; 11/3/ it was 178; 11/10 it was 138; 11/17 it was 116; 11/24 it was 52. Is that sufficient?

Q. Did you ever reach a point where no one was employed? A. No, we still have some watchmen there.

Q. Now can you give us the approximate figures on how the total wages paid out dropped off weekly by weeks? A. Well, on October 13 the wages was $24,178.78; on the week of the 20th, $23,150.44; on the 27th, it was $16,318.56; on the 3rd it was $6,511.78; on the 10 of November, it was $6,141.63; on the 17 it was $5,059.75; on the 24th it was $1,356.04.

[137] Q. Now prior to the date of Ocotber 17, between the date of the election, September 6, and the date of the stockholders meeting, October 17, there was some lessening in the employment figure right down through that time, was there not? A. Yes, some of our employees quit.

Q. And the amount of the payroll gradually from lets say a high of $29,000 on 9/1, that started tailing off right after that time, did it not? A. There was a reduction until on the 13, I gave you the figure $24,178.78.

Q. In other words the amount of the payroll and number of employees started falling off right after the election right on down until November? A. That is right.

Trial Examiner: Of course your question is confined to the period of September 6 and October 17, during that time you showed relatively small reduction in both number of employees and payroll. The witness said that some employees quit. I am wondering does that mean that the entire reduction during that period represents quits?

A. No Sir.

Q. (By Mr. Dyer) What about that? A. No.

Q. Was there some people that were actually laid off? A. No.

[138] A. I misunderstood the question, I don't know what you are talking about, numbers?

Q. Yes, that is correct? A. All those that were in that quit. We did not lay off anybody and did not discharge anybody.

Q. When was the first layoff? A. The first layoff we made was after October 17.

* * *

[140] Q. Now at anypoint in the week, let me put it this way, prior to the election, what was the standard work week? At Darlington Manufacturing Company? A. We tried to, it has been the policy and practice to operate six days a week for six days a week at 144 hours a week.

Q. And that would include practically all of the departments? It would vary because of the balancing of the mill,

would affect it; of course more likely affect the weaving department, whereas the yarn was available to weave. Of course there has been times in the last year when we did not have sufficient balance to operate the weaving full time but the object was to try to operate the plant 144 hours a week six days a week, three shifts.

Q. Into her words, Mr. Oeland, the production of one department, take weaving, would depend on the department that went before it? A. Yes, but you try to operate all departments on the basis of six days a week, three shifts in each department.

Q. And in the majority of instances you did do that prior to the election? A. Yes, that is right.

Q. Following the election was the amount of time in the various departments greatly reduced? A. Following the election, following the directors meeting?

[141] Q. No, following the directors meeting? A. We had accumulated some warper yarn over some months of time in order to have it available to warp these new looms when we made a start on them, when we got them installed, and this yarn was in the warehouse, and with the possibility of the stockholders taking action on business principals, we realized that we had better use that yarn which meant that the departments behind it would not run as regularly as they had been, which was only for the reason given that the change was made.

Q. In other words the departments up to the production of warper yarn there, after the directors meeting, got less work, the departments from there on out? A. Yes, that is true.

Q. Now did you formulate any plans as to how the production was to be curtailed? A. When?

Q. At any stage of the game? A. The production superintendent formulated the plans, I was close enough there to know what was going on.

Q. And you went along with his plans for gradual reduction? A. Yes.

Q. For instance, along immediately after the stockholders meeting, the people who worked in the opening and picker rooms were laid off and a number of spinners were laid off and most [142] of the departments right on up to the weaving were very quickly laid off after the stockholders meeting, were they not? A. As you understand, it would affect of course the card room and picker room first, and then would affect the spinning room and then the other departments down to the weave room. With the production superintendent and with the overseers we tried to formulate a plan that the people on jobs would, quitting would be laid off when their job was completed, or when they had part time, say maybe for one little group you had to call in for roving to supply some more roving, as a job they would be called in one or two days a week, and the people that cleaned up the machines in the, say with card room help, and we tried to formulate the plan and stick to it right through.

Q. In other words you were trying to plan to make everything come out even, what yarn you had backlogged to run that on through the weave room and make it into cloth but you did not start following the board of directors meeting of September 12, you did not start much new cotton through the process of making yarn, did you? A. The cotton was going through all of the time.

Q. Pardon? A. Some cotton was going through all of the time.

Q. Some but was not the amount reduced substantially? [143] A. It was reduced because of the preparations de-

partments as I told you earlier, nobody was laid off, you understand that?

Q. Work was reduced? A. Yes, the work week was reduced to try to balance out the production.

Trial Examiner: That was beginning when?

A. Beginning after the directors meeting.

Q. (By Mr. Dyer) Now did most of your people holding regular jobs stay on those jobs during this period following the directors meeting so that the number of spare hands did not get as much work as they usually got? A. That would be possible but in view of the fact that some of them had quit, we had materially reduced the second hands as brought out by those figures that I gave you, it is possible that some of the spare help did not get as much time as they had.

* * *

[144] Q. When, what day do you remember that a large group of people were first let go? A. As I said, it was a gradual thing because even though the wages might not show it, hiring a man perhaps even in the picking room or card room where part of the card room had to be run through to make the filling going to cloth, he might not get but one or two days a week but at least he was on the payroll until we finished with it, and then some were on the payroll after that getting the process through trying to clean up the machinery.

Q. Now in the card room, for instance, you regularly had about 48 employees? A. I think that is the figure?

Q. And somewhere around 140 in the spinning room? A. Yes.

Q. Now lets take the carding department, was not the carding department cut practically in half on the 18th of

October, according to your figures? A. I have not checked it, I guess you are talking about your figures?

Q. Well, I was trying to take my figures from your figures. A. Well, I did not go back and check them from your figures but your figures show out of 47 employed in the week before that we had 25 on the payroll.

[145] Q. Well, as far as your memory goes, do you remember that is about right? A. Yes, as far as it goes I think. I don't think there is a very big difference.

* * *

[152] A. May I be allowed to go back to the directors meeting?

Q. Yes, that is where it first came in? A. Yes, at this meeting Mr. Roger Milliken brought out that there were certain conditions at Darlington that needed reappraisal in view of the recent turn of events.

Mr. Poag: In——

A. In view of recent turn of events, that Darlington Manufacturing Company over the previous five years had failed to show much more than three percent return on the investment, that the Japanese situation was getting bad or made the competition very keen, and the margin of profit was very low at this time. That in order for Darlington to complete modernization it would be necessary to put in air conditioning and refrigeration, which in itself was a sizeable amount of money and the cost [153] of the building there, all selling high, the physical condition as well as the limited room around for expansion that it was questionable whether we should put out this amount of money for such an expense. In addition the trend was going towards wider cloth, that all of Darlington's looms up to the ones that had

been recently purchased were forty inch looms, and in the next five years it is very possible that we would have to replace a good many of our looms with wider looms which would necessitate another sizable amount of money to spend. That in view of these economical and business reasons he recommended that the directors give serious consideration to the rest of the stockholders to liquidate.

Q. You referred to Mr. Milliken's statement in regard to the Japanese textiles, the trend to wider looms and the possible outlay for refrigeration and air conditioning, but those were not developments of the moment, what were the certain developments which necessitated the meeting of the Board of Directors? A. I do not remember his exact words but he used some similar words at the recent election where the majority of the people in the plant were not, by their vote for the union he felt would not be willing, they would not be willing to go along with the management in making it possible to show a return on the investment.

[154] Q. In other words the words certain developments and such serious import referred to the election, did they not? A. I would think that, I mean certainly the certain development did, I don't know about the serious import, I question that.

Q. However, Mr. Oeland, there was no particular mention made in the minutes of the board of directors meeting for September 12 of an exhaustive and careful analysis of certain developments? A. No.

Trial Examiner: That last phrase, Mr. Dyer, I think is taken from another resolution.

Mr. Dyer: Pardon?

Trial Examiner: Were you reading from something, "exhaustive and careful analysis"?

Mr. Dyer: Those words are in General Counsel Exhibit 8 for identification.

Q. One of the paragraphs of the resolution, Mr. Oeland, refers to "The company shall go into liquidation after its present goods in process are fully manufactured, or at such time as it is determined by the officers of the corporation that such goods in process are manufactured to the extent as may be reasonably and conveniently done." Actually, at the time of the stockholders meeting there was very few goods left in process, were there?

* * *

[161] Q. Now the next point that was brought up in the board of directors meeting was that a resolution to the effect that $10.00 per share would be paid as the first distribution of the assets to stockholders of record as of 6:00 P. M., December 15, 1956, is that correct? A. No, I think the record—yes, that is right.

Q. And was such a distribution made? A. Yes.

Q. And from what funds was that distribution made? [162] A. From the company funds.

* * *

Q. I understand that there was approximately 150,000 shares of outstanding stock, is that correct? A. Yes.

Q. And so the distribution of $10.00 a share would amount to $1,500,000? A. Yes.

* * *

Q. From what funds was the distribution made? In other words did you have any particular fund from which it was made? Did you have cash on hand of $1,500,000? A. We did.

Q. Was that from receivables or was it just laying around in the office, in the bank or what? A. It was, some of it was in the bank, some was receivables from out selling organization.

Trial Examiner: From your selling organization? [163] A. Yes.

Q. (By Mr. Dyer) That selling organization is who? A. Deering, Milliken Company.

* * *

[172] Q. Mr. Oeland, I notice in the reference made in the minutes to payment to a Mr. T. J. Glenn? A. Yes.

Q. In connection with personnel matters? A. Yes.

Q. Who is Mr. Glenn? A. He is a friend of mine in Union, S. C.

Q. And what connection does he have with Darlington Manufacturing Company? A. He has no connection except for some services that he rendered.

Q. And these were in regard to personnel matters? A. Yes.

Q. With whom? A. Mr. Glenn is connected with Monarch Mills in Union, S. C.

Q. In particular what was the personnel matters? A. I requested that he come to Darlington and survey the situation and see if there was anything that we were doing or anything that should be done with regard to the Union organizing the plant.

Q. And did he make such a survey? A. Yes.

Q. When was that made? A. He was there on several occasions.

Q. When, before the election or prior to the election? [173] A. Yes.

Q. And what was the nature of the survey, was it conducted in the plant? A. Yes, he made personal contacts with the supervisors and the workers. He had conferences

with supervisors and conferences with myself and supervisors.

Q. And you stated that he did talk with various workers? A. Yes. To my knowledge he went down there some times early in the morning or late at night and talked to them and got his impression on conditions and things that were going on.

Q. And did Mr. Glenn give you a report on his survey? A. Nothing more than verbal report on his advice.

Q. And what did that consist of? A. Consisted of things I just——

Q. Well, in specific terms what was some of the advice that he gave you? A. Some of the things we discussed was whether the supervisors were handling their relationships with the employees at this time as under the law, the Taft-Hartley Law.

Q. In other words was he telling, was he retained by you to discover whether you were within the bounds of the law in your actions? A. That was one of the things he was doing.

Q. Was Mr. Glenn a lawyer? A. No, he was a personnel manager.

[174] Q. Mr. Oeland, what was the fee given to Mr. Glenn? A. $500.

Q. Now was his only function to determine whether the supervisors were acting within the law or did he have other functions? A. He was making a survey of the situation for Darlington during this period to give us his best advice and help on the problem of our presenting to our supervisors information or help that would be helpful in the employees making up their minds on this question.

* * *

[180] Q. Mr. Oeland, you have given us various dates on when the complement of employees dropped way down, could you say that actually following the 3rd of November most of the production work about that time had about ceased and what was remaining was the remaining process of cleaning up the machinery and getting the machinery in readiness for the auction sale? A. I would say yes, that is fair to say that.

Q. Was the auction sale held as scheduled? A. Yes.

[181] Q. Just one point. Do you remember that the new looms, the 84 new looms that had been purchased were auctioned off at this sale? A. Yes.

Q. They were completely unused looms? A. Yes.

* * *

Q. Let me ask you this, Mr. Oeland. You do know that the Darlington Manufacturing Company lost money on those new looms? A. Yes.

* * *

[225] Mr. Zimny: Mr. Examiner, the last order of business before the recess was your ruling on the Petitions to revoke the subpoenas. The union is now prepared and wishes to make an offer of proof in regard to your ruling in relation to the subpoenas upon Roger Milliken in his capacity as President of Deering, Milliken & Company, Incorporated, Deering, Milliken Company, Incorporated, and the Deering, Milliken Service Corporation.

* * *

[226] In order that the Board will have before it a complete record as to the relation of the proof sought to be adduced by the revoked subpoenas to

the matters in question in this case, [227] The Textile Workers Union of America hereby submits the following Offer of Proof:

The Textile Workers Union of America offers to prove through the testimony of Roger Milliken as President of Deering, Milliken & Company, Inc., Deering, Milliken & Company, Inc., and Deering, Milliken Service Corporation, the latter two corporations through duly authorized officers or agents, that:

Deering, Milliken Company, Inc., is a New York Corporation whose main offices are at 240 Church Street, New York City. This Corporation is engaged in the textile business as exclusive selling agent and textile merchants for a large number of companies. The officers of Deering, Milliken and Company, Inc., are as follows: Roger Milliken, President; Gerrish H. Milliken, Jr., Vice President and Assistant Treasurer; Seth M. Milliken, Vice President; J. C. Harris, Vice President, A. J. Dillard, Vice President, W. Kuenzel, Vice President, Harold A. Hatch, Vice President and Assistant Treasurer; Joseph R. Smith, Vice President and Assistant Treasurer; Minot K. Milliken, Vice President and Treasurer; W. B. D. Stroud, Vice President; Francis G. Kingsley, Vice President, I. P. Crowther, Vice President, Alexander J. May, Vice President, Charles W. Kable, Jr., Secretary and Assistant Treasurer, E. F. Flanigan, Comptroller and Assistant Secretary.

The directors of Deering, Milliken & Company, Inc., are [228] as follows: Roger Milliken, Gerrish

H. Milliken, Jr., Minot K. Milliken, Francis G. Kingsley, Harold A. Hatch. Deering, Milliken & Company, Inc., exercises control over all of the activities of a large number of textile mills, most of which are in South Carolina. This control includes a dominant and controlling voice in each of these mills' labor relations. None of these mills are unionized. Among these mills are the following: Monarch Mills, with plants in Union and Lockhart, S. C.; Abbeville Mills Corporation in Abbeville, S. C., Darlington Manufacturing Company, Darlington, S. C.; Drayton Mills, Inc., Spartanburg, S. C. Excelsior Mills, Inc., with plants in Union, Clemson, Pendleton, McCormick and Johnston, S. C., and a plant in Rutherfordton, N. C.; Gaffney Manufacturing Company, Inc., Gaffney, S. C., Gayley Mills Corporation, Mariette, S. C.; Laurens Mills, Inc., Laurens, S. C.; Pacolet Manufacturing Company, with plants in Pacolet and Pendleton, S. C., and New Holland of Gainsville, Georgia; and the Deering Milliken Service Corporation with headquarters in Greenville, S. C.

The control over these and other affiliated companies is exercised by Deering, Milliken Company, Inc., through interlocking officers, directorates, controlling stock-ownership either outright or by Deering, Milliken & Company, Inc., or through its officers and directors individually and as trustees for members of their respective families or [229] friends or others, or by control of the stock proxies that are carefully solicited prior to each stockholder's meeting.

Deering, Milliken & Company, Inc., also controls its affiliated companies through its position as exclusive sales agent. In its capacity as sales agent, it functions as a sole marketing outlet. Without these markets, the affiliated companies would be economically helpless. In this capacity it also controls the quality, quantity and type and cost of production of its affiliated companies. Deering, Milliken & Company, Inc., also factors the accounts of its affiliated companies and in this way provides essential operating capital. Deering, Milliken & Company, Inc., is the principal debtor of its affiliated companies and almost all of their accounts receivable are attributable to sales by Deering, Milliken & Company, Inc. The availability of these receivables determines policy on expansion and modernization of the affiliated mills. Deering, Milliken & Company, Inc., also purchases the raw materials for its affiliated mills.

* * *

[234] Centralized and coordinated control over activities in these subsidiaries is also maintained by Deering, Milliken & Company through research and Service Corporations which are in turn governed and controlled by the parent Deering, Milliken & Company, Inc. One of these corporations is the Deering, Milliken Service Corporation. This corporation provides the [235] following services for plants in the Deering, Milliken chain: Industrial engineering, purchasing, costs and placement, fibre quality control, research.

* * *

[238] Deering, Milliken & Company, Inc., exercises complete control over the labor relations and labor policies of its constituent mills. Thus through the industrial engineering facilities of the Deering, Milliken Service Corporation, it enforces and maintains a uniformity of work assignments, work efficiency, job classifications, wage rates, employee training programs and employee recruitment. Deering, Milliken also maintains and enforces in its constituent mills, including Darlington, uniformity in all other terms and conditions of employment, including hourly, piece and incentive wage rates, shift premiums and plant minimums. Fringe benefits are also uniformly maintained. These include holidays, vacation and employee insurance programs. The vacation pay plan is in fact known as the Deering, Milliken Vacation Plan (General Counsel Exhibit 3).

[239] General wage increases are put into effect simultaneously in all Deering, Milliken & Company, Inc., mills. The last general increase was announced by Roger Milliken as president of Deering, Milliken & Company, Inc., on October 3, 1956, effective October 8, 1956. It was put into effect simultaneously in each of the Deering, Milliken & Company, Inc., mills. The increase was not put into effect in the Darlington mill by Deering, Milliken & Company, Inc., because of the charging union's election victory on September 6, 1956.

Deering, Milliken & Company, Inc., also maintains uniform policies regarding the top management of its constituent mills. Their compensation, pension and retirement rights, as well as other rights

and benefits, are uniformly maintained. Thus a uniform retirement plan covering executives of all constituent mills is maintained. This is known as the Deering Milliken Mills Retirement Plan, (p. 2 of General Counsel Exhibit 7).

One of the keystones of Deering, Milliken & Company, Inc., labor relations policy in all of its mills is its unwillingness to tolerate unionization among its workers. This policy has been strictly adhered to so that at the present time there are no unions in any of its operating mills. Past attempts at unionization in constituent mills have been defeated by Deering, Milliken through carefully planned and executed tactics. The enforcement of this anti-union policy is [240] responsible for the closing of the Darlington Manufacturing Company, the Respondent herein.

* * *

[242] The closing and liquidation of the Darlington Manufacturing Company, the Respondent, is the most recent manifestation of Deering, Milliken policy which is not to operate mills which are unionized or in which a substantial group of employees demonstrate their desire for a union

The union campaign started at the Darlington Manufacturing Company in the spring of 1956.

Trial Examiner: Mr. Zimny, in connection with these other plants to which you have just referred, has the Board found unfair labor practices?

Mr. Zimny: I have no record of charges having been filed in those situations.

Roger Milliken, as president of Deering, Milliken & Company, Inc., was immediately notified of

this development by James M. Oeland, plant manager of Darlington Manufacturing Company, (record pp. 99). Thereupon, Deering, Milliken & Company commenced its campaign against the union. It prepared anti-union posters and propaganda which were placed in all of the working areas in the mill and circulated among the employees (General Counsel Exhibits 4 and 5; record pp. 100).

* * *

[247] The total production of Darlington has been transferred and absorbed by other Deering, Milliken Company plants in South Carolina and vicinity and so Deering, Milliken Company has suffered no depletion in the type and amount of products available for sale by it. On the other hand, it has succeeded in preventing and destroying a union in one of its plants and in warning employees in all of its other plants, as well as textile employees throughout the South that if they try to organize a union, they will suffer economic capital punishment. They will lose their jobs, their plants will close and their families, friends and community go hungry.

That completes the charging union's offer of proof.

* * *

[254] LAWRENCE WILSON COOK, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner: State your full name?

* * *

Q. And your address? A. Route No. 4, Darlington, S. C.

Direct Examination

Q. (By Mr. Dyer) Mr. Cook, did you ever work for Darlington Manufacturing Company? A. Yes.

Q. What was your job there? A. A filling offer.

Q. How long did you work there? A. Approximately two years.

Q. What department did you work in? A. Spinning department.

Q. What shift were you on? A. The second shift.

Q. Who was your supervisor? A. Mr. D. K. Shirley overseer and Frank Kinsey second hand.

* * *

[255] Q. Mr. Cook, did you ever attend any union meetings? A. Yes.

Q. Did any of your supervisors ever mention union meetings to you? A. Mr. Kinsey on the following Monday after the meeting held on Sunday afternoon asked me what size crowd we would have and that was primarily all the subjects he talked about, how many we had at the meetings.

* * *

Q. (By Mr. Dyer) Mr. Cook, did Mr. Kinsey just ask you about this one time or more than once? A. It was more than once, but I could not say whether it was two or three, in other words he did not ask me every week how many we had, but some times we get around to being there, he would say what size crowds did you have this time, and I would always say a good crowd, which we did have a pretty good attendance.

Q. Did he ask you anything else concerning that? A. No, not about the meeting.

Q. Did any of your supervisors besides that talk to you about the union? [256] A. Yes Sir, Mr. Shirley talked to me concerning the union.

* * *

Q. Who talked to you first? A. Mr. Kinsey on July 25 informed me that Mr. Shirley was going to talk to me if he had not already talked to me and I told him he had not and I would welcome the opportunity if he wanted to talk to me.

Q. Did Mr. Shirley thereafter talk to you? A. Mr. Shirley on July 30, sent for me to come to the office he wanted to talk to me.

Q. What office was that? A. It was his particular office in the spinning department.

Q. Where is this, is that the overseer's office? A. Yes.

Q. Where is the overseer's office located? A. It is located on the fourth floor.

[257] Q. What time of day was it when you got up there? A. He relieved me with my responsibility of a job at 4:15 and kept me until 4:45 talking principally a half hour.

Q. What was the conversation that you and Mr. Shirley had? A. Mr. Shirley told me he had been intending to talk to me for some time about the union, and said that he had been getting reports that I had been talking to the help, he told me that I had talked to his help, and he said that it was going to be his duty to inform me not to talk to them on the job and I told him that I had not talked to them on the principal job, I had been talking to them in the bathroom and the tower and other places other than on the job. He also told me that if he got any more reports on me, he was going to have to do something about it and I told him he

could do whatever he pleased about it, that if anybody told him that I had been talking to any of his help on the job and for that conversation it would be a falsehood, that I had a good telephone at home, I had been using it and I would use it a little bit more.

Q. Was there any more conversation that you remember? A. Well, not right off that I could remember and put altogether.

Q. Was anything said about Mr. Shirley, about the operation with the union? A. Mr. Shirley told me, talked with me again on August 31, and at that meeting——

Q. Where was that he talked to you on the 31st? [258] A. How is that?

Q. Where was it he talked to you? A. He sent for me to come back to his office, in other words he came back down and informed me personally to come to the office.

Q. And what was the conversation at that time? A. He started off and said, "Well, I guess you know why you are in here", and I told him, "Yes, I did, that Bill Goodwin saw me talking to Mrs. Jackson", and I told him, I said, "I can assure you that the conversation was not about the union at all," I said, "It was not for the union or against the union, in other words primarily we were talking about the conditions of work, the way the work was running and we were talking about that, that was our subject, and at that time he told me that the union, if it came in that the mill would not operate with it. And he also informed me that, or asked me rather what percentage of the people we thought that we had, and I told him he would have to wait until that following Thursday and he would see in the election. He also asked me did I think the people would be foolish enough to vote that thing in here, and I told him I did and he said, "Well, I am going to have to ask you to

refrain from talking to anyone at all and not to go in the departments, in other words in the room where my job is at until 4 o'clock, regular work schedule time.

[259] Q. You mentioned Mr. Goodwin, in that conversation—A. Well, in other words Mr. Shirley came back to me on September 12 after the stockholders meeting was held,——

Q. Just a second, who is Mr. Goodwin? A. Mr. Goodwin is the superintendent.

Q. He is the production superintendent? A. Yes.

Q. Now were there any further conversations about the union? A. Not particular at that time, with Mr. Shirley whenever I was talking to him in that meeting but on September 12th, Mr. Shirley came down on the job and said "Mr. Cook, do you remember the time I talked with you last, I told you that if you folks voted that thing in here, (the mill would surely shut down;) now they are liquidating the stock, and", he says, "I hope you are sorry for those 500 people", that he sure is himself, and I said, "Well I am too. If the mill shuts down I am sorry." And so he left me and a few minutes later Mr. Goodwin came to me, where I was at and he said in a loud tone, said, "Well, I guess you heard the news", and I said, "Well, I don't reckon you can blame me for all of it", and he said, "Well, yes, 90% of it." He said, "It was a mistake when they hired you in the first place", and I said, "Well, for sure you did not hire me". He said "No, but Lee Cook did," and I said "Lee Cook did not, Mr. Mullendore hired me". And he said, "Well, when you get all of these people on [260] your conscience and your pocketbook is flat I hope you are satisfied", and I told him my conscience was clear, and he went on.

Q. That was on the afternoon of September 12? A. Yes, that is right.

Q. When were you laid off? A. I was laid off or terminated on October 24 at midnight.

Q. Have any improvements been made in the machinery in your department during the past year? A. Yes, they put on what they call the pneumafill in the department where I worked in the Whitting range, it is a new type of roving creel and a suction or draft or suction for a larger roll lap, it was a suction lap.

Q. How about bobbins, were they the same? A. No, they put on different type of bobbins, they put on a bobbin that had been set off and altered and peaked to approximately an inch or inch and a quarter or something similar to that and they used primarily around five or six frames on the job.

Q. Were they longer or shorter? A. Longer bobbins.

* * *

Cross Examination

Q. (By Mr. Price)

* * *

[261] Q. Now you came back and started working in 1954, lets get down to these conversations with these people, Mr. Kinsey was your second hand? A. Yes, that is right.

[262] Q. He talked to you twice about the Sunday meeting, is that right? A. As far as I remember I would say twice.

* * *

Q. Mr. Kinsey did on two occasions ask you how many you had out there? A. That is right.

* * *

Q. And that is all he said? A. Yes, that is right.

* * *

Q. Now coming down to Mr. Shirley, he was the overseer? A. Yes, that is right.

Q. And the first conversation you had with him on July 30, he merely told you that you must not talk to people on the job about joining the union? [263] A. No, he said he had been getting reports from me talking to the people, and if I did do so he was going to have to do something about it, he never did say what he was going to do, but I had it in mind that he would probably lay me off.

* * *

Q. (By Mr. Price) My question was, did not Mr. Shirley on the 30th of July when you had the first conversation with him in his office, tell you in this same conversation that you had a perfect right to join the union if you wanted to? [264] A. He said I had a perfect right to my opinion and he had a right to his opinion, that he did not see where the union would do us any good. I told him I thought it would.

Q. That is right. You had quite a little argument about it, did you? A. No, we did not have no argument, there was no hard feelings at all, and no atmosphere of hard feelings.

Q. And he told you that you were welcome to your opinion and you could join the union if you wanted to, did he? A. Yes, but he also told me in further conversation that if we brought the union in that the mill would not operate.

Q. All right, that was the first or the 30th of August. and the 30th of July conversation he did not say a thing about the union would stop, or about the mill would stop, did he? Is that right? A. Well, there has been so much said about it I can't remember every time which date.

Q. Well, you got up there a while ago and very glibly told what had happened on the 30th of July, and I am asking if at that time he said anything to you about the possibility of the mill closing down? A. Well, Mr. Shirley went far enough to tell me that he had worked with the union up at Goldsboro or somewhere up there and he could not get along with it and he was sure that if we brought it in here that it would be, we could not get along with it there.

* * *

[266] Q. Now then, at this time he did tell you I believe you said, that he felt that if the union came in there the company would liquidate and go out of business? A. Yes, he did not say liquidate, he said close down.

Q. That was just his opinion? A. Well I don't know whether it was his opinion or where he got the information from.

* * *

[267] Q. (By Mr. Price) Well, was it his idea or not, did he say if you had been out on strike and the union came in there the mill probably would close? A. He did not mention strike at all.

Q. But he did say—how did he say that exactly? About the mill closing? A. He said if we voted that thing in here he was sure that the mill would not operate.

Q. That was on the 30th of August? A. Yes.

Q. Now then, you did have another conversation with him the day after the election or the day of the election, which was it? A. It was on September 12th, the day of the stockholders meeting, the last conversation I had with him.

Q. Is that the stockholders meeting or the directors meeting on September 12th? A. Oh, the directors meeting.

Q. What conversation was it you had with Mr. Shirley? A. He came to me and said, "Mr. Cook, you know the last time I talked with you I told you that if you folks voted that thing in here that this company would liquidate", and he said, "Well, they are liquidating the stock, and", he said, "the mill is going to close," and I said, "Well, if they are going to [268] close I am sorry", and he said, "I hope you are sorry for these 500 families", and I told him when they was informed of the closing I sure was sorry for them.

Q. And he was telling you the fact that the directors meeting had recommended to the stockholders and passed a resolution, you knew that did you? And that is all he told you?

Mr. Dyer: I object, he just asked what he had been told and now he is arguing with the witness.

Mr. Price: That had been put in the newspaper had it?

A. It was published afterward, yes.

Q. And in fact what Mr. Shirley told you was nothing more or less than you could see in the newspaper, was that right? A. I had not seen the newspaper, Mr. Shirley came to me that same day after this meeting that they got the word back from Mr. Oeland I understand.

Q. Then when you had the conversation with Mr. Goodwin, what was it Mr. Goodwin said to you, you say? A. Mr. Goodwin came up to me and said, "Well, I guess you heard the news," and I said "Yes, but I don't think you can blame me for it", and he said, "Yes, ninety percent of it". He said "It was a mistake when they hired you in the first place." I said, "Well, for sure you did not hire me", and he said, "No, Lee Cook did", and I said, "Lee Cook did not, Mr. Mullendore hired me", and he said, "Well, you have got

these [269] people on your conscience and your pocketbook is flat, I hope you are satisfied," and I told him "My conscience is clear," and Mr. Goodwin left.

Q. Your conscience was clear and he left? A. Yes.

Q. Did Mr. Goodwin walk over to you? A. No, Mr. Goodwin came down voluntarily there.

Q. Was that in the mill? A Yes, I was on the job at work.

* * *

[271] *Cross Examination* (By Mr. Updike)

* * *

[279] Q. Now, at these union meetings to which you referred, or at least at some of them, Mr. Boyd Payton spoke, did he not? A. Yes, that is true.

Q. And he has testified here as Southern Director of the Textile Workers Union of America? A. Yes, that is right.

Q. You knew him by sight? A. Yes, I did.

Q. Now, had he ever spoke at any union meeting about getting higher wages for those people who were his listeners there? A. He did not directly tell us he would get us anything whatsoever.

Q. In other words he told you, give your memory of what he said?

* * *

A. So we will understand, he did not directly state that we would get anything.

Q. Did he indirectly state that he would get you something? [280] A. He did not. In other words he outlined other places where they had contracts and similar to where we might get these same conditions.

* * *

[282] Mr. Updike: I was going to add to that, did either Mr. Payton or any of his assistants get up and address your union meeting and talk in terms of what the union could do to get higher wages for those employees?

A. He did not say he would or would not.

Q. Did he talk about higher wages? A. He said there was a possibility that if they saw where the company could afford to pay it we could probably get it.

* * *

A. We were told only as to what other contracts and other mills got for the similar type of work that we did.

Q. And were they getting more at other mills according to what you were told? A. Yes.

* * *

[289] MRS. ELIZABETH JOHNSON, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. And your address? A. 346 Buchanan Street.

Direct Examination

Q. (By Mr. Dyer) Mrs. Johnson, did you ever work for Darlington Manufacturing Company? A. Yes Sir, for approximately four years.

Q. And what was your job? A. During the latter part spinning. The first year was in the cloth room working.

Q. So for the first year it was cloth room work and the last years spinning? A. Yes.

Q. What shift did you work on? A. The third shift.

Q. Who were your supervisors? A. Mr. Shirley was the overseer and Mr. Shirley Passmore was second hand.

[290] Q. Did any supervisor ever talk to you about the union? A. Yes.

Q. Who? A. Mr. Shirley.

Q. Did anybody else ever talk to you about the union besides Mr. Shirley? A. Our superintendent, Bill Goodwin.

Q. Lets take Mr. Shirley first, when was it that he talked to you about the union? A. It was some time after, I don't know just, I don't remember the date but I do remember it was in July some time after July first he asked me to come to his office.

Q. Was it during the first part of July or middle part or last part? A. I believe it was the last part.

Q. And did this conversation take place in his office? A. Yes.

Q. How did you happen to get to his office? A. Well, he asked me about coming by and he asked how I was getting along and active since the accident that I had on the 26 of June.

Mr. Price: I can't hear her.

A. He asked how I was getting along after the accident I had in June, I told him I would like to see another doctor and the conversation picked up and he asked me how I felt [291] about the union, and I told him I thought it would be a good thing, and he said what, and I repeated it, and after I repeated it Mr. Shirley said that he worked in a mill where they had a union and he never did intend to work in another mill where they had one, and I asked him if I could get to see a doctor and he said he would have to see the mill nurse.

Q. Did he say anything else about the mill operation? A. He said the mill was not making enough profit to be able to afford a union, said it was just making two percent profit and they could not afford a union activity or union whatever you call it. And this conversation took place in his office on the fourth floor at the head of the stairs.

Q. How did you happen to go to his office? A. He asekd me if I could come by the office one morning when I got off work.

Q. Now was this the only time Mr. Shirley talked to you about the union? A. Yes, as far as I remember.

Q. You mentioned Mr. Goodwin, when was it Mr. Goodwin talked to you about the union? A. About September, along about the 11th I would say.

Q. Where were you at the time? A. On the job.

Q. Now was this at the beginning or end of your shift? A. The end of my shift.

[292] Q. What did Mr. Goodwin say? A. He said, "I see you have still got that button on", and I said "Yes Sir, I am not a liar or a cheat or a hypocrite", and he said, "I admire your courage", and he asked me if I had seen the doctor yet and I told him that I had not, and he said he had a new nurse he had hired, why did I not go down and see her and see if I could not get some more medical attention, and our superintendent, he told us people that if we voted the union in the plant that they would shut it down, and that they would start shutting it down in about thirty days, and I asked him, I said, "I might want a recommendation, how would I stand up", and he said if I did not go to one of the Milliken mills I had a good recommendation but he would have to tell them that I voted for a union, and I said "You don't have any record that I voted for the union, how do you know", and he said "I take your word

for it. I told Mr. Goodwin that was good enough for me, and he said I had a good work record and that he would have to tell them that I was a good hand.

* * *

Q. Was any new equipment put in the spinning room during the past year that you worked there? [293] A. Yes, pneumafill.

Q. Did you see anything else? A. They had some air conditioning but I don't know when they were installed.

* * *

[295] MRS. NETTIE WHITLEY, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. And your address? A. 342 Calhoun Street.

Direct Examination

Q. (By Mr. Dyer) Mrs. Whitley, did you ever work for the Darlington Manufacturing Company? A. Yes Sir.

Q. What was your job? A. Spooler tender.

Approximately how long did you work for the company? A. From May 10, 1942 until about the 20 of October, I am not [296] positive but it was around about the 20th, 1956.

Q. Were you laid off on the 20th of October, 1956? A. Yes.

* * *

Q. The overseer is Hugh Campbell? A. Yes.

* * *

A. Well, not too much. Mr. Campbell talked to me a little, he never did tell me to vote for the union or not vote for it but he did tell me that he felt like they thought that I was for it because they would not hire my husband back and I don't know why he knowed they would not hire my husband back, he quit one time and they never would hire him back without they had got that from the office.

[297] Q. Just a second. When was it that Campbell first talked to you about the union? A. Well, I don't remember just exactly but it was a good bit before the election.

Q. It was before the election? A. Yes.

Q. About how long before, a couple of days or weeks? A. Well, I would say more than a couple of days, maybe a week or something, I don't know exactly.

Q. Where were you at the time? A. In the mill.

Q. At your job? A. Yes.

Q. What did Mr. Campbell say at that time? A. He just asked me how I felt about it, and I did not say anything at first, that is when he told me about they felt like I was for it and I told him yes, and then another time he come around——

Q. I will get to another time, I want to know everything he said at this first time? A. Well, that is, he just told me that they felt like I was for it because they would not hire my husband.

Q. Was anything said about voting at that time? A. I just don't recall.

Q. Now when was it that Mr. Campbell talked to you after that time? [298] A. It was just before the election and he told me that he hoped that I would, that I had thought about it and he hoped that I would vote right, and I told him, I said, "Well, I feel like I am."

Q. Did Mr. Campbell ever talk to you after that time? A. Well, not concerning the union because that was just before the election but he did tell me at that time that it would even make enemies of your neighbors much less the workers in the mill.

* * *

[300] FORREST A. CAMPBELL a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. And your address? A. Route No. 5, Darlington, S. C.

Direct Examination

Q. (By Mr. Dyer) Mr. Campbell, have you ever worked for Darlington Manufacturing Company? A. Yes.

* * *

[301] Q. What was your job there? A. Spare loom fixer and smasher and weaver.

Q. How long did you work for the company? A. About fifteen years, and a half.

* * *

Q. Did you ever hear any supervisor talk about the union? A. Yes, once or twice.

Q. When was the first time you remember any supervisor talking about it? A. Well, about two or three days prior to the election, Mr. Dixon, I was in the office and he asked me how I felt [302] about the union and well, I had not made up my mind and he said "Well I hope when you vote" I would know it was a possibility of shutting the mill down as they had in Maine.

Q. Did Mr. Hutchinson ever talk to you about the union? A. After the election he was in the water house and he said that they had voted the union in and he hoped the people were satisfied, and that is all.

* * *

Q. Do you know Mr. Oeland? A. Yes.

Q. Did you ever have a conversation or occasion to visit his office? A. Once.

Q. When was that? A. On October 5th.

Q. 1956? A. Yes.

Q. What was the purpose of that visit? A. I went to the office to get my Christmas check signed and asked Mr. Oeland how the situation looked and he said it looked very dim, and he said if the union was out the mill would run and definitely in the mill would close. That is all.

* * *

[304] Q. (By Mr. Price) Mr. Campbell, I want to ask you about two questions. The occasion you went to Mr. Oeland's office, you went there strictly on your business about your Christmas check? A. Yes.

Q. He did not send for you or anything of that sort? A. No.

Q. And then the occasion about the election or the union was brought up by you by asking him how it was going? A. Yes.

Q. And everything that was said there in that conversation was brought about by your asking him that question? A. Yes, that is right.

Q. And then what he replied to you was just telling you what he thought about it? A. Yes.

Q. He did not tell you that you should not vote for the union or anything about it, did he? A. No. He did not mention it.

* * *

[305] JOHN BENJAMIN PLUMMER, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner: State your full name?

* * *

Direct Examination

Q. (By Mr. Dyer) Mr. Plummer, did you ever work for the Darlington Manufacturing Company? A. Yes Sir.

Q. What was your job? A. In a Roller shop.

Q. How long did you work for the company? A. 38 years.

* * *

[306] Q. Did any overseer ever talk to you about the union? A. Mr. Baker talked to me a right smart about it.

Q. Do you remember when he talked to you about it? A. Well, he would ask me pretty well every time they would have a meeting about how many was down there and about who all was and such as that.

Q. Now were those the only occasions when he would talk to you? After the meetings? A. Sir?

Q. He talked to you after you attended the union meetings? A. Yes.

Q. How about before the election did he ever talk to you on any particular occasion? A. Well, the day before the election he told me that I better vote like he said, he said it might involve liquidation and you won't have a job, like he said "You won't have any job."

Q. Did he say anything else? A. Well, I believe he said that Thursday was election day, and we would see Monday who had a job and who did not.

[307] Q. Do you recall any other time that Mr. Baker talked to you? A. No Sir, I don't believe so.

Q. Do you know Lonnie Dixon? A. He come in.

Q. Do you know him? A. Yes.

Q. Did he ever talk to you about the union? A. Yes Sir, a right smart.

Q. When was that? A. He come in the boiler house where I was at one day and said, "You see what the union done for you, they shut the mill down, I wonder if they are going to feed us."

Q. Was this after the election? A. Yes.

* * *

Q. Do you remember when was this conversation with Dixon, how long after the election? A. It was something like three or four days. I don't know exactly how long.

Q. You were laid off? A. Yes.

[308] Q. Who laid you off? A. Mr. Williams come and told me my job was eliminated.

* * *

Q. (By Mr. Dyer) Did Mr. Williams say anything about the mill shutting down? [309] A. Yes.

Q. What did he say? A. He said the union was going to shut the mill down. Said they were going to shut down on account of the union.

Q. That is when he laid you off? A. Yes.

* * *

[310] ELI WELCH, [311] a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. And your address? A. 564 Cleveland Street, Darlington, S. C.

Direct Examination

Q. (By Mr. Dyer) Mr. Welch, were you ever employed by the Darlington Manufacturing Company? A. Yes.

Q. What was your job there? A. Weave room.

Q. Weaver? A. Yes.

Q. How long did you work there? A. Well, approximately 18 years, I had three years in service.

* * *

[312] Q. Did any of your supervisors ever talk to you about the union? A. Yes.

Q. Who? A. L. E. Dixon and Winston Taylor.

Q. Lets take Winston Taylor, who was your second hand? A. Yes.

Q. Did he talk to you once or more than once? A. Twice.

Q. For how long a period did he talk to you about the union? A. Well, from the time the campaign started until well, he talked to me before the election and after.

Q. Well, how often would that take place, was it once a week or twice a week? A. I would say on the average of twice a week, maybe more.

Q. You said from the time the campaign, I think we have had some testimony that it started in April or May? A. Yes.

Q. What did Mr. Taylor say to you about the union? A. Well, he kept insisting that Roger Milliken would close the mill if the union went in there and said he had closed [313] one in Maine on account of organising and he would close this one. I did not agree with him, he told me that, he said, "Well, I tell you what will happen", he said, "You will get your $300 or whatever Roger Milliken gives us and he will be through with you."

Q. Did he say this same thing to you more than this one occassion? A. He only said that on one occasion.

Q. What about other occasions? A. He kept insisting that they would close the mill down if the union went in.

Q. You mean Taylor kept saying to you that Mr. Milliken would close the mill down on a number of occasions? A. Yes.

Q. This would be prior to the election, is that right? A. Yes, before and after.

Q. What was the nature of the conversation after the election? A. Well, the general thing, he said "I hope you all are satisfied, you got the union here and the mill is closing". He might have thought so because after the election he left.

Q. Now you mentioned Mr. Dixon, when did he talk to you about the union? A. Well, he sent Mr. Taylor down on my job September 14, which was on Friday and Mr. Taylor told me that Mr. Dixon wanted to see me in his office.

[314] Q. Did you go to the office? A. I did.

Q. What was the conversation, who was present? A. Mr. Dixon and Mr. Taylor came on up with me and I believe, I don't, I can't recall, I know the two of them was in there.

Q. And you? A. Yes.

Q. What was the conversation? A. Well, he told me he just wanted to discuss a critical situation and said "I am sure you will understand", he said, "You have been living a better life for the past few years", and he said "The situation was really critical, that the mill was going to close", and said "Inside of two weeks and the people will be suffering, that the older people would not be able to get a job", and he said, "It is going to be an awful sight", and he painted a pretty bad picture there.

And during this time I was wondering why he had me in there, and telling me this because there was not anything I could do about it, and so I was willing to do most anything that I could about it, I told him that I would do anything I could, but I could not see anything that I could do, and I went back to my job.

Q. Before you say that, did Mr. Dixon say anything else to you about the union or the plant? A. He said that the plant was closing down, that he was in a [315] position to know that it would close, and said there was no doubt about it that it would close down, he said if it would help the circumstances any that he would walk right out of there then and never come back. He said that the mill was closing and that was a sure thing.

Q. Did he say anything about mentioning this? A. He said he could have told us this before the election, but it was against the law to do so.

Q. All right, you said you returned to your job? A. Yes, that is right.

Q. What happened then? A. Well, within ten minutes Leroy Jones, a loom fixer in the weaving department came to my job and he had a petition and he told me that Mr. Dixon said for him to come to me first with the petition, I did not know why.

Trial Examiner: How much later was this?

A. About ten or fifteen minutes after I left the office, he said this petition was to keep the mill running and after this petition he had shown to me about the seriousness of everything and the suffering and right away I put my name right on it. And I did not even read it.

* * *

[325] CORBIN ANDREWS, a witness for and in behalf of General Counsel, after being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. And your address? A. 324 Syracuse Street, Darlington, S. C.

Direct Examination

Q. (By Mr. Dyer) Is that here in Darlington? [326] A. Yes.

Q. Were you ever employed by Darlington Manufacturing Company? A. Yes.

Q. What was your job? A. Doffer.

Q. What shift were you on? A. Third.

Q. How long did you work there? A. Approximately nine years altogether. I started the 19th of March 1946.

* * *

[331] MRS. ALLEN GAINEY a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. And your address? A. 209 Lee Street, Darlington, S. C.

Direct Examination

Q. (By Mr. Dyer) Mrs. Gainey, did you ever work for the Darlington Manufacturing Company? A. Yes Sir.

Q. What was your job there? A. I was a creelerman.

Q. How long did you work there? A. The last time about a little over three years.

Q. Had you worked prior to that? A. Yes.

Q. About how long all together? A. About I would say ten years altogether.

* * *

Q. Who were your supervisors? [332] A. Mr. Campbell.

* * *

Q. He was the overseer? A. Yes.

Q. Did Mr. Campbell ever talk to you about the union? A. Yes.

Q. When? A. The day after they got the National Labor Relations Board notice to have the election.

Q. Where were you at the time? A. In the mill.

Q. What did Mr. Campbell say? A. He come to us, called three of us together and told us that they had got the notice to have the election and then he told us he hoped that we would vote like we knowed was right instead of like we thought was right. He also told us that Milliken was not going to let nobody come down there and tell him how to run his business, and I said, I did not know that the union done that, and he said "They try".

* * *

[335] MRS. OLEEN GARRISON, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. Your address? A. Route 5, Box 73, Darlington, S. C.

Direct Examination

Q. (By Mr. Dyer) Mrs. Garrison, did you ever work for Darlington Manufacturing Company? A. Yes.

Q. What was your job there? A. Spinner.

Q. How long did you work there? A. I think about 23 years altogether off and on.

* * *

[337] Q. Did any of your supervisors ever talk to you about the union? A. Yes.

Q. Who? A. Mr. Kinsey talked to me about the union.

Q. Anybody else? A. Yes, Mr. Shirley mentioned it to me.

Q. Mr. Shirley? A. Mr. Shirley mentioned it.

Q. Mr. Kinsey and Mr. Shirley and did anybody else? A. I believe Mr. Hutchinson.

Q. Let's take Mr. Kinsey first, when was it that Mr. Kinsey [338] first talked to you about the union? A. Well, he talked to me on several occasions before the election about the union.

Q. Do you remember about when the first one was? A. It was about two weeks before we had our first meeting, I don't know the date because he talked to me all along on several occasions, and I did not keep up with the dates. But it was two weeks before we had our first meeting he talked

to me about it. He told me that Mr. Milliken would not have the union in his mill.

Q. Where were you when this conversation took place? A. On my job.

Q. And you said he told you or talked to you on several occasions thereafter? A. Yes.

Q. How often would he talk to you? A. Well, about once every two weeks or every other week.

Q. Did he say the same thing to you or a different thing? A. Well, he usually would bring up the mill that he had already closed because of the union and he told us, told me that they was keeping our names down there in the office, all of us that took part in the union activities and that a lot of us were going to be out of a job after the election, and was over, and that we would have a hard time finding a job anywhere else.

[339] Q. Did Mr. Shirley ever talk to you about the union before the election? A. No Sir.

Q. How about after the election? A. After the election on September 12 I was sitting on the steps eating lunch and he came up the steps and asked me if I had heard the bad news about the mill closing, and I told him that I had but that I wanted, maybe this would change their minds and not close and he said no, it is no change of that, said that Mr. Milliken had planned to spend a lot of money on the mill to make it a modern plant but with the people divided in the union he was not going to spend anything on it, he was just closing down and selling the machinery.

Q. Did Mr. Shirley ever talk to you about the union after that? A. Once again. He came by one day and asked me how the work was going.

Q. When was that? A. That was the following week after that, and he asked me how the work was running and

I told him it was running better than it had been and he said that it was a shame that they had to shut down, said they just now got to where it would run, and I told him maybe somebody would buy it and it would not shut down, and he said no, that nobody did not want a cotton mill with the union in it, that the man could [340] not make no money running a cotton mill with the union. He said that he did not have no orders now to run because the buyers had cancelled their orders since we had voted the union in, they would not even buy the cloth.

* * *

Q. Lets go back to Mr. Kinsey, did he ever talk to you after the election? A. Yes, he talked to me the last day that I worked on his shift, he talked to me about it.

Q. When was that? A. That was on the 20 of October.

Q. What did he say at that time? A. He asked me did it make me feel bad or worried me to know that I was partly to blame for the mill closing, and I told him that I did not feel like I was any more to blame than him or anybody else, that the working conditions were so bad and the jobs so hard that we could not have gone on like we was. I told him that we had a right to vote and I did not see why the government give us the right to vote and then let a man close the plant down and because the voted the union in.

Q. Did he say anything else? A. He said well, Mr. Milliken said he would close down and he did not have no better sense than to belive him.

[341] Q. Now you mentioned Albert Hutchinson, when did he talk to you about the union? A. That was on Friday night before the stockholders meeting on the 17. I don't know the date but I remember I had got out at 6 o'clock because I was sick and I was going home, and I met him in the tower downstairs and he told me that, he was talking

with a man at that time and I had stopped to wait on the lunch wagon, and so he started talking to me then and said the mill was going to close and if we did not get the union out, and I told him that there was not anything I could do about it; and he said I could help, he said I could help and said that if we could get up a petition to get the union out that the mill would run on, and he wanted me to come up here and see Mr. Buchanan, or any of the business men, he said, would help me and get the union people on the committee to sign it and get the union withdrawn so the mill would run. But I did not, I got to thinking about it, and decided that I would not. I did not want the people mad at me.

* * *

Q. Mrs. Garrison, during the past year has there been new equipment put in your department? A. Yes.

Q. What was that? [342] A. They put this pnaumafill down on the filling but they had not done anything on my job, I don't think, but down on the filling they had put pneumafill in.

Q. Did you hear anything about any new weave machines? A. Yes, I seen some new looms in the warehouse, but I don't know how many or when they were put there.

* * *

[387] RAYFORD CARNES, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Trial Examiner: Your address?

The Witness: 130 Cleveland Street, Darlington, South Carolina.

* * *

Direct Examination

Q. (By Mr. Dyer) Mr. Carnes, were you ever employed by the Darlington Manufacturing Company? A. Yes, sir.

Q. What was your job there? A. Loom fixer.

Q. What shift did you work on? [388] A. First shift.

Q. How long were you employed by the Company? A. About 20 years.

* * *

[393] Q. Any Supervisors ever talk to you about the Union? A. Mr. Taylor.

* * *

Q. How often did Mr. Taylor talk to you about the Union? A. Very often.

Q. When did Mr. Taylor start talking to you about the [394] Union? A. Before the election and after.

Q. He started before the election? How long before the election? A. I'd say two or three weeks.

Q. Two or three weeks? A. That's right.

Q. How often did he talk to you? A. I'd say he talked to me, say, at least twice a week, something like that.

Q. Would his conversation be about the same or different each time? A. Approximately the same conversation.

Q. Where would it be that he would talk to you, at your work? A. Well, it would be at my work bench or in the water house.

Q. All right, what was the—you said the conversation was essentially the same. What was the conversation? A. Well, his conversation time and again was that if we voted the Union in that Roger Milliken would close the plant down, he would not run with the Union in it.

Q. He said this to you before the election? A. That's right.

Q. Did he talk to you about the Union after the election? [395] A. That's right..

Q. How often did he talk to you about the Union after the election? A. Well, I couldn't say just, you know, how often, but he brought it up a good many times.

Q. Pardon me? A. I couldn't say exactly how many times he brought it up but it was very often.

Q. Could you give us an average? Twice a week or once a week? A. Once a week, something like that.

Q. How long did that continue? A. Well, I'd say it continued on up to about a week before he left there.

Q. All right, and approximately when was that? A. When he left there I could not say, I don't remember the date, don't remember the week he left.

Q. How long was it before you left there? A. How long before I left?

Q. That's right. A. I was discharged on the 27th.

Q. 27th of October? A. That's right.

Q. How long before that was it that Taylor was talking to you? [396] A. Before I were laid off?

Q. Yes. A. I'd say a couple of weeks.

Q. Several weeks? All right, and was the conversation of Williams at that time the same or was it different on each occasion? A. No, sir, he told me he wanted to see me and he taken me out——

Trial Examiner: Are you speaking of Williams now?

Mr. Dyer: Taylor, pardon me.

A. Wanted to see me, taken me out through the slasher room, out the back door, going out next to the old cloth room. I got out there and he said, "Rayford—" he said he didn't see how in the hell the peoples' conscience could bother

them when little children would be going around hungry on account of the mill being closed down. He said Roger Milliken would not run with the Union in the mill. He asked me did I know any of the Committeemen. I said yes, I knew some of the Committeemen. He asked me could I get him the names of the Committeemen. I said, "Yes, sir, I can, but I'm not going to." He said that the people was making a great mistake by voting the Union in. He said that the people was going to be in bad shape for Mr. Milliken would not run the mill with the Union in it.

* * *

[397] Q. Well, when was this particular occasion that you remember? A. This was somewhere on—about the 15th of September.

* * *

[398] Q. (By Mr. Zimny) Mr. Carnes, in the conversations that Mr. Taylor had with you did he at any time bring up the name of Lloyd Gossett? The Union representative? A. Yes, sir, I believe he did.

Q. Will you tell us what he said and when it was said? A. As well as I can remember it——

Q. Was this before or after the election? A. This was after the election.

Q. Have you got any idea about how long after the election it was? A. This was prior—approximately, I would say, somewhere around the 15th, somewhere along there.

Q. 15th of September? A. Beg pardon?

Q. 15th of September? [399] A. Yes, sir.

Q. Would you tell us what he said? A. As well as I can remember he asked me would I go to the meeting and tell Mr. Gossett that it would be better or it would be better

if he would leave town because there were people out on the streets looking for him and if they caught him he would never come back to Darlington. As well as I can remember that's what he said.

* * *

[413] MRS. MARION GAINEY, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * *

[414] Trial Examiner: Your address?
The Witness: 120½ South Main Street.

Direct Examination

Q. (By Mr. Dyer) Now, real loud, Mrs. Gainey, did you ever work for Darlington Manufacturing Company? A. Yes, sir.

Q. What was your job there? A. Spinner.

Q. And what shift did you work on? A. Second.

Q. How long did you work with the Company? A. Eleven year.

* * *

[416] Q. Did any of your Supervisors ever talk to you about Union meetings? A. Yes, sir.

Q. Who? A. Well, Mr. Shirley and Mr. Kinsey.

Q. Let's take Mr. Kinsey. When did Mr. Kinsey talk to you about Union meetings?

* * *

[418] Q. Had you worked for Darlington Manufacturing the whole [419] time you had been employed? A. No sir, I worked in Hartsville.

* * *

Q. All right, what did Mr. Shirley—when did Mr. Shirley talk to you about Union meetings? A. On the 26th of June.

Q. On the 26th of June? A. Yes, sir.

Q. Where was that? A. In his office on the fourth floor.

Q. How did you happen to get to his office? A. Well, I was out that day and I went by his office to pick up my check.

Q. All right, and did you have a conversation with him then? A. Yes, sir.

Q. What was the conversation? A. He asked me what I thought about the Union and I told him I had never worked in a mill that had a union and I asked him what he thought about it and he said he had worked where [420] there was a Union and people had to work harder and he said that Mr. Milliken would not run the plant with a Union in it.

Q. Did he say anything else? A. He said he didn't have to worry because before he took that job they promised him if the mill closed they would place him in another Deering-Milliken plant.

Q. Anything else? A. Well, that was all at that time.

Q. All right, Mr. Shirley ever talk to you about the Union after that? A. Well, yes, sir, after the election.

Q. After the election? When after the election? A. On the 11th of September.

Q. Where were you at the time? A. I was working behind a blow pipe and he passed by where I was working. He said, "You remember me telling you that the mill would close down if the Union went in?". And I said, "Yes." He said, "Well, it's closing down October 17th.

Q. Did he say anything else? A. He said that what made it so bad was putting all the people out of work.

Q. Anything else? A. I don't remember nothing else.

Q. How about Mr. Kinsey, did he ever talk to you about the Union? [421] A. Yes, sir, a lot of times. I don't remember just how many.

Q. Before or after the election? A. Well, both.

Q. I'm talking about conversations other than when he discussed Union meetings with you? A. It was after the election that he had told me if I would get Mrs. Olene Garrison or some of the others that was on the Committee to sign a petition and take it to the office that he believe it would help keep the mill running.

Q. When did he say this to you? How long after the election? A. I'd say about a week.

Q. Did Mr. Kinsey say anything to you about the Union prior to the election? A. Well, yes, sir, I couldn't say how——

Q. Did he talk to you once or more than once? A. Yes, sir, a lot of times. I couldn't say just how many.

Q. Well, over how long a period of time did he talk to you before the election? A. Well, I don't know, it was on several occasions, but I don't know exactly how many.

Q. Was his conversation the same or different on each occasion? [422] A. Well, it would be a little different but he said Mr. Milliken wouldn't run the plant with a Union in it because he wouldn't be told what to do.

Q. Did he say this on one occasion or more than one occasion? A. More than one.

* * *

[431] JOHN B. FLOYD, a witness called by and on behalf of General Counsel, being [432] first duly sworn, was examined and testified as follows:

* * *

Trial Examiner: What is your address?
The Witness: Route 5, Darlington.

Direct Examination

Q. (By Mr. Dyer) Did you ever work for Darlington Manufacturing Company? A. I did.

Q. Mr. Floyd, I will have to ask you to speak louder. What was your job there? A. Well, the last seven years was stripping, stripping cars.

Q. How long did you work for the Company altogether? A. Altogether 27 years.

* * *

Q. Who were your Supervisors? A. Mr. Hammond, Bill Hammond.

[433] Q. Is he an Overseer? A. Yes, sir.

* * *

Q. Mr. Hammond ever say anything to you about the continuation of the plant? A. Well, we never did talk any much till I asked him about did I have to go down and vote.

Q. When was that? A. That was, I believe, on the day before the Union election. He told me that he rather I would go vote because if I didn't vote it would count for the Union, so I up and told him then that I had been to one meeting and had signed a blue card and he said, "Yes, I know that, I have been told that you belong to the Union."

Q. Did you have any other conversations with Mr. Hammond concerning the Union? A. Well, before we got

through with that conversation he pulled a little pamphlet out and showed me on it that it had two blocks, "yes" and "no", showed me how to vote and said if the Union went in Milliken would close the mill down.

* * *

Did you have any other conversations with Mr. Hammond—— A. Well—[434] concerning the Union? A. I believe the day after they had the Board of Directors meeting on the 12th—about the 13th, I think, I walked in the office where Mr. Hammond was at and he was cleaning up his desk and everything, packing up, and he told me that he was getting ready to leave, that Milliken was going to close the mill down so I found out what I had to do and I went on back. That's about all I had to talk about.

Q. Following the election were you ever asked to sign a petition of any type? A. Yes, sir.

Q. When was this? A. I believe this was after they had the Board of Directors meeting. I don't recollect what date it was.

Q. All right, did you read a petition? Did you read what the petition was? A. No, right at the time I didn't have time to read it.

* * *

Mr. Dyer: I will stop at that point and merely ask you, [435] was this lady who asked you to sign the petition one of your fellow workers? A. Yes, a drawing hand.

* * *

Q. (By Mr. Dyer) Did you have any conversation regarding this petition with any of your supervisors? A. Well, a day or two later I asked Mr. Hammond how many

did they get to sign the petition. He said he didn't know but the only way that they could get the mill to run would be for the Union men to go to Milliken and withdraw.

* * *

[437] MAUDE T. GRANT, a witness for and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Trial Examiner: Your address?

The Witness: 110 Washington Street, Darlington.

Direct Examination

Q. (By Mr. Dyer) Mrs. Grant, did you ever work at the Darlington Manufacturing Company? A. Yes, sir.

Q. What was your job there? A. What was my job?

[438] Q. Yes. A. As spooler.

Q. How long did you work for the Company? A. Almost 23 years.

* * *

Q. Who were your supervisors? A. Mr. Campbell.

* * *

Q. (By Mr. Dyer) Mrs. Grant, did you ever attend any of the Union meetings? A. I did.

Q. Did Mr. Campbell ever talk to you about Union meetings? A. He did.

Q. Once or more than once? A. On several occasions.

[439] Q. Do you know about when that started? A. Just before the Union started because it was just circulating and he came to me and told me that if he was me he would

not join the Union because it was no good and "Mr. Milliken would close the plant down and we would all be out of work and he said he didn't see how some of the people around here can afford to be out of work, and I said, "I don't know anything about a Union, but I'm for it, this work is killing us."

Q. This conversation took place when the Union was first getting started? A. Yes, when the hearing of it was just circulated.

Q. Do you know when that was? A. I think it was in May, I'm not sure.

Q. You also said Mr. Campbell talked to you about Union meetings? A. Yes.

Q. On several occasions? A. On several occasions.

Q. Was that after this particular one? A. Yes, after that.

Q. When would he talk to you about the Union meetings? A. During my working—at my work.

Q. On any particular day of the week? A. No.

[440] Q. And how many different occasions do you remember he talked to you about the Union meetings? A. I distinctly remember three.

Q. Do you remember when those were? A. Yes, sir, one—I don't know the day of the month, or the—I think it was in May, he came to my work, he said, "Did you attend that meeting yesterday?" And I said I did, and he said, "Did you sign a card?" And I said, "Yes." He says, "Well, if you signed a blue card don't vote 'yes' because Mr. Milliken will certainly close down the plant and we will all be out of work," and he said, "I don't see how some of them will get along."

Q. Do you remember any other occasion that he spoke to you? A. Yes, September 5th, which was the day before

the election, he came to my work and says, "I have decided when I will let you all go vote. I will let you go shortly after 8:00 in the morning."

Q. All right, go ahead. A. And I said, "Mr. Campbell, I won't be in for work because I have promised Mr. Gossett that I would be an observer at the polls for the Union." Go on?

Q. Yes, ma'am, go ahead. A. And Mr. Campbell said, "Don't you know we are not going to allow you to go out and vote for the Union while [441] for us?" He said, "I'll expect you to be on your job in the morning, and I will allow you the privilege I allow the others to go out and vote and come back."

Q. All right, now, do you remember any other occasion when he talked to you about Union meetings? A. Yes, afterwards, after the election.

Trial Examiner: You say he told you he wouldn't let you vote for the Union while you were working?

The Witness: Yes, "Don't you know we won't allow you to go out and work for the Union while working for us, the Union is not in yet." And I said, "I promised Mr. Gossett I would be there," and he said I was working for the Company, not Mr. Gossett.

Q. (By Mr. Dyer) You said there was another occasion when he talked to you about Union meetings after the election? A. Shortly after the election.

Q. Where were you at the time? A. At my work.

Q. Do you remember how long after the election it was? A. A few days.

Q. What was the conversation? A. He came around there and said, "Well, you got the Union in now, why don't you go ask them to buy the mill?"

* * *

[443] *Cross Examination by Mr. Poag.*

* * * *

[445] Q. The Union promised you if they came in that the employees would have complete control over the workloads, didn't they? A. Nobody didn't tell me that.

Q. They didn't? A. But I heard what other mills were doing that had unions.

* * *

[447] Q. (By Mr. Poag) And in this letter, doesn't the Union tell you that the only possible way that you will ever be able to have a voice on workloads, piece rates, seniority, grievances, wages, and so forth, and so forth, is through the Union?

* * *

The Witness: If it's in the letter, that's what it said.

Q. (By Mr. Poag) And that's what you expect the Union to do for you? A. Sure, if it went in, but it didn't get a chance.

* * *

[453] MARGARET TRUETT a witness for and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Trial Examiner: Your address?
The Witness: Route 5, Darlington.

Direct Examination

Q. (By Mr. Dyer) Mrs. Truett, did you ever work for
[454] Darlington Manufacturing Company? A. Yes, sir.

Q. What was your job there? A. Running the warpers.

Q. Ran warpers? How long did you work for the company? A. About 14 years.

* * *

Q. Any of the supervisors talk to you about the Union? A. Mr. Campbell.

Q. When? A. About a week after the election.

* * *

Q. All right, where were you at the time he talked to you? [455] A. On the job.

Q. What did he have to say to you? A. Asked me did the people believe the mill would close. He asked me did the people believe that the mill would close and I told him no. He said, well, it had happened before and it would happen again; that Mr. Milliken would close the mill as sure as God made little apples.

* * *

[461] CHARLIE L. FRAZIER a witness for and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * *

[462] Trial Examiner: Your address?

The Witness: 112 Cotton Street, Darlington.

DIRECT EXAMINATION

Q. (By Mr. Dyer) Mr. Frazier, did you ever work for Darlington Manufacturing Company? A. That's right.

Q. What was your job there? A. Elevator man.

Q. How long did you work for the company? A. I went to work with them the last of June, 1910.

Q. And you worked continuously with them all that time? A. No, sir, not continuous.

Q. Pardon me? A. No, not continuously.

Q. Approximately how long altogether did you work for the company? A. Well, I don't rightly know. During

the depression I was off three years there and I farmed four years during that time.

Q. Anywhere upwards to 30 years or so? A. That's right.

* * *

[463] Q. All right, did any of the supervisors ever talk to you about the Union? A. Mr. Campbell.

Q. Did he talk to you once or more than once? A. Once, that was all he talked to me.

Q. When was that? A. Well, that was on Tuesday, as well as I remember, before the election Thursday.

Q. That would have been about the 4th of Septmber? A. That's right.

Q. Where were you at the time? A. Standing in the slasher room door.

Q. What was the conversation? A. I was standing there in the door and Mr. Campbell walked up and said, "Well, looks like we going to run into a mess." I said, "Yes." He said, "Well, if the Union is voted in Milliken will shut the mill down, he won't run it under a union."

* * *

Q. Did you have any conversations with any of the other supervisors about the Union? A. The Cloth Room man.

Q. Who is that? A. Willie Anderson.

[464] Q. He's an overseer? A. That's right.

Q. When did you have a conversation with him? A. Once before and once afterwards.

Q. You mean before and after the election? A. That's right.

* * *

Q. (By Mr. Dyer) When was the time before the election? How long before the election was it? A. It was during the same week of the election.

Q. But it was prior to the election? A. I don't remember just the day.

Q. Where were you at the time? A. Well, standing on the second floor in the tower, in the second floor at the door.

Q. What was the conversation? A. Well, the conversation, I don't remember just how it come up now, whether I brought it up or he did, but the conversation was that the mill would shut down if the Union come in.

* * *

[465] Q. You say you had a conversation after the election? How long after the election was it? A. That was some—I imagine two weeks after.

Q. And where were you at that time? A. Same place, in the tower, in the door of the cloth room.

Q. What was the conversation then? A. About the same thing, that the Union had come and the mill would shut down; it wouldn't run under a Union.

Q. Is that what Mr. Anderson said? A. That's right.

* * *

[470] MARY ELIZABETH BAKER a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Trial Examiner: What is your address?
The Witness: 108 Cotton Street.

Direct Examination

Q. (By Mr. Dyer) Mrs. Baker, have you ever been employed by Darlington Manufacturing Company? A. Yes, sir.

Q. What was your job there? A. Spinner.

Q. And how long did you work for the company? A. Well, the last time about 4 years, a little over 4 years.

Q. How long have you worked for the company altogether? A. I don't know, I went to work when I was 16 and worked until I was 21, off and on. I got married and quit and came back after that.

* * *

[471] Q. Who was your supervisor? A. D. K. Shirley, Overseer, and Shirley Passmore, Second Hand.

Q. Did either Mr. Shirley or Mr. Passmore ever say anything to you about the Union? A. Yes.

Q. Who? A. Both of them.

Q. Let's take Mr. Shirley first. When did he first mention the Union to you? A. He came by one morning to talk to me about a shortage in my payroll.

Q. When was that. A. A week or approximately a week before the election.

Q. Now, where were you at the time? A. Working on my job.

Q. What was the conversation? A. Well, after we finished talking about my payroll shortage, he started to walk off and came back and said, "While I'm here I would like to ask you something, how do you feel about this Union?" I said, "Well, I haven't given it too much thought, I don't think anything we could do could make it worse, I want to do what's right." He said, "I'm [472] sure you do. It's—the Union is not the right thing if it's voted in there because a lot of people will be out of work and the mill will be closed down," and so he said, "If you want the lowdown on this Union you should ask somebody that works at Goldsboro," said, "they can tell you." That's all he said to me about it.

Q. Was anything mentioned in the conversation about the mill running? A. What mill?

Q. Was anything mentioned in that conversation about the mill running? A. About it running?

Q. Yes. A. He just said it would be closed down if the Union came in, that's all.

Q. Now, who is the next man to talk to you about the Union? A. Mr. Passmore and that was about—after the second or third Union meeting. I hadn't attended any of them.

Q. When was that?

Trial Examiner: You say you had not attended?

A. I had not attended a meeting up until then. He came by where I was working and asked me if I had been to any of the meetings and I said no, I hadn't, but I intended going to some, and he said I better leave the Union alone, said there wouldn't be anything but trouble if they ever get a [473] Union in here, Mr. Milliken would close down, he won't run the mill under a Union.

Q. (By Mr. Dyer) When was that? A. I don't know when, it was after the second or third meeting that the Union had out at the Springs.

Q. Mr. Passmore ever talk to you about the Union after that time? A. Yes, the morning of the election, it was somewhere between 5:00 and 7:00, I don't know, after the dope wagon had come through, and after we had started to go down to vote. He came by with a sample ballot to show which block to check and he said the "yes", you know—the "no" for the company, you know, and I said, "What about that one?" And it looked like it made him mad and he said, "I can't tell you crazy people nothing," said, "I tried to tell you if you vote that Union in it would close the mill down."

* * *

[475] ABBIE BAXTON JACOBS a witness for and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Trial Examiner: What is your address?
The Witness: Route 5, Box 64, Darlington.

Direct Examination

Q. (By Mr. Dyer) Mr. Jacobs, did you ever work for Darlington Manufacturing Company? A. Yes, sir.

Q. How long did you work for them? A. About 13 years.

Q. What was your job? A. Doffer at first and last was spare hand, day jobs.

Q. And where did you work, spinning room? A. Yes, sir.

Q. Who were your supervisors? A. Mr. D. K. Shirley, overseer; Frank Kinsey, Second Hand.

Q. Did either of the supervisors ever talk to you about the Union? [476] A. Yes, sir, they have mentioned it.

Q. Who? A. Well, Mr. Kinsey asked me one day, one Monday, if I attended the Union meeting on the Sunday before that. I told him yes, sir, and——

Q. When was this? A. That was sometime during the time they was having the meetings over there but I don't know just what time.

Q. During the first part of the Union campaign or latter part? A. About the middle of it. I told him I had attended and he said, "You better let that thing alone," said, "Milliken will shut the mill down if it goes in."

Q. How about Mr. Shirley, did he ever talk to you about the Union? A. Yes, sir, Mr. Shirley talked to me once or twice.

Q. When do you remember he talked to you about the Union? A. I don't remember the date, I didn't pay attention to the date but I—he got me up in his office one day.

Q. When was that, do you have any idea? A. That was sometime during the time they were meeting over at the Spring but it was before the election.

Q. Before the election? How long before the election was it? A. I couldn't say exactly, it was 3 or 4 weeks, I imagine. [477] He asked me if I knew anything about the Union. I said no, I didn't, and he told me to think it over. He asked me if I thought I would vote for it. I said yes, I thought so. He told me to think it over and let him know what I decided but he never said any more about it and I didn't.

* * *

[478] JESSIE P. HARRELSON, a witness for and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Trial Examiner: What is your address?

A. 125 Calhoun Street.

Direct Examination

Q. (By Mr. Dyer) Mrs. Harrelson, did you ever work for Darlington Manufacturing Company? A. Yes, I did.

Q. What was your job there? A. Spinner.

Q. How long did you work for the company? A. Off and on for 18 years. Mostly off.

Q. What shift were you on when you last worked there? A. Third.

Q. Now, you said your employment was off and on? A. Yes.

Q. When was the last time you went back to work there? A. It was the last of April or the first of May of 1956.

* * *

[479] Q. Did you continue to work on from that time until the time you were finally laid off? A. Did I continue to work on?

Q. Yes. A. Uh huh.

Q. Did you have any time you were off from April? A. I was—I had two weeks off in June.

Q. You had two weeks off in June? A. Yes.

Q. Did you request that time off? A. No, I didn't, I was laid off.

Q. You were laid off? A. Yes.

Q. By whom? A. By Mr. D. K. Shirley.

Q. Were you rehired again after that time? [480] A. Yes, I was.

Q. By whom? A. Mr. D. K. Shirley.

Q. Did you have any conversation with Mr. Shirley when he rehired you? A. Yes, he sent after me one morning about 10:30, I guess, or maybe 11:00, I don't know the exact time, sent word for me to come down to the office, he wanted to talk to me, so I went down and he hired me back, said that he had 14 spinners that he could take a choice and that he—they had discussed it at the personnel office and they decided that they would hire me back and he talked with me about the situation. I understood to come back to work meant they would like for me to be to work regular and do my best ability and talked the situation over about that.

Q. Was the Union mentioned at all in this conversation? A. Well, yes, after he hired me I stood up to leave the office

and he said to me that, "You understand, of course, that you've got your job?" And I said, "Yes," and he said, "This has no bearing on whether you are hired or not, but—" said, "what do you think about the Union situation?" And I told him that due to the fact I had been laid off I didn't think it concerned me whatsoever and I had not given it much thought and he told me then that the Union was not good for anybody, that he had worked at a plant where there [481] was a Union and it would cause bloodshed and hardship and heartache and bitterness between friends and brothers and sisters and everything else that if I was approached by a Union worker, which evidently I would be, to think it over before I took sides with the Union.

Q. Now, did any of the other supervisors ever mention Union to you? A. Well, before I was laid off Mr. Kinsaul came to me one night.

Q. When you speak of before you were laid off—— A. Before I was laid off before those two weeks in June, Mr. Kinsaul came to my job one night and asked me what I thought of the Union and as far as I can remember I told him I thought the Union would be a good thing and he said that the Union wasn't good for anybody, and I said, "If it will help us workers I think it would be good," and he said well, it would not help us workers, that Roger Milliken —that we couldn't afford to have happen here what happened in Maine. Roger Milliken closed the plant in Maine because of the Union and he would do the same thing here. He said he didn't feel like me or any of the rest of the workers could afford to have the plant closed.

Q. Did he say anything else? A. And that if we ever got an election to think it over before I voted "yes."

* * *

[483] Q. Did you have any conversation with any of the supervisors after that time? A. Well, the night of the Board of Directors meeting in Spartanburg I stopped in to the office to pick up my mother's pay check which was on a Wednesday night, it was about 20 minutes until 12:00.

Q. Who was in the office? A. Mr. Frank Kinsey.

Q. Second Hand? Did you have a conversation? A. And Mr. Shirley Passmore, both Second Hands for second and third shift.

Q. Did you have a conversation? A. Yes.

Q. What was the conversation? A. A little—Mr. Passmore said to me, "wonder how the Union people feel now?" I sort of shrugged my shoulders and said, "All right, I guess, why?" He said, "They shut the mill down." I said, "Have they?" I said, "How do you know?" I read Mr. Oeland had gone to Spartanburg for a [484] Board of Directors meeting but they had not had the stockholders meeting to decide what to do. He said, "I don't care what you read," said, "Mr. Oeland called Mr. Shirley this afternoon from Spartanburg and said they were going to close the plant down because of the Union," and I walked out of his office.

Q. Did you have any other conversation with either of these supervisors? A. Well, soon after 12:00 the same night Mr. Passmore came to my sides. I was on Eva Blackmon's job, still spare hand, and I was in the big alley. He walked up and said, "Well, I hope you all are satisfied," said, "I told you damn Union people if you all voted the Union in he would close the plant down." He said, "Roger Milliken is not going to run a plant with the Union." He said, "In spite of what you or the Union think about it, Roger Milliken will close the plant down." I said, "Roger Milliken is no god, he has no right to tell us if we can have a

Union or not," and he said that—still, he said, that Roger Milliken would close the plant down, we would be sorry of it when people were hungry and we talked a few minutes and finally I said, "Passmore, please go away because I don't want to have an argument." And he said, "I cannot argue with you and the Union people," and walked away.

Q. Let me ask you, was anything said in the conversation [485] about other jobs? A. He told me, he said, "Do you realize that none of you people will ever get another job in another cotton mill? You will have to have a personal recommendation from Darlington Manufacturing Company and you will not be able to get that," and I told him that in all probability we didn't want another job in another cotton mill."

Q. Were you laid off? A. Yes, I was.

Q. When were you laid off? A. October 19th.

Q. Who laid you off? A. Shirley Passmore.

Q. And did you have a conversation with Mr. Passmore at the time you were laid off? A. Well, it wasn't at the time I was laid off, it was during—maybe the week before I was laid off.

Q. During the week before you were laid off? A. Before, or the week before that, it was just before, prior to the week I was laid off.

Q. All right. A. I didn't get very much work and that particular night I was put to help straighten out the jobs which was left behind for the second shift and I worked for about an hour and a half or maybe two and Mr. Blayton, who was a [486] section man, told me to be down to the spare floor or office and tell Mr. Passmore I had done all the work he had for me that night, so I went down there and Passmore was on the spare floor and evidently, being a night

we picked up check; we went into the office and the conversation was resumed, or picked up, about the Union and the situation and he told me that Roger Milliken was going to close the plant because of the Union. He said that when these people in Darlington had lost their homes and their car and was going hungry they would point their finger in my face and say I was the cause of it all and I asked him, "Out of 256 people how could they blame me alone for it," and he said that Roger Milliken would definitely close the plant and that Roger Milliken was a millionaire and he could do as he pleased in spite of what me or the Union thought about the situation.

Q. Was there anymore of the conversation? A. I don't know, I can't remember all of it.

Q. See if you can remember anything more about it? A. Not now, no, I can't.

Q. Was anything said in the conversation about bluffing? A. What? About bluffing? Different times he told me we thought Roger Milliken was bluffing but he wasn't.

Q. Now, did any of the other supervisors ever say anything to you about the Union or the plant? [487] A. No, not that I remember.

Q. Any supervisors ever say anything to you about Mr. Milliken was laying a trap? A. That was in the conversation. I remember it so well, now, that Mr. Passmore and I had the last night that I had only worked an hour and a half or two hours. He said Roger Milliken knew that the Union had planned to organize the south and that he also knew that they were going to pick one of his mills and he has set a trap for them and they had walked in and took the very mill that Roger Milliken wanted them to take.

* * *

[512] HARRY O'NEAL, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

[513] Trial Examiner: State your name?

A. Harry S. O'Neal.

Q. Your address? A. Route 5, Darlington.

Direct Examination

Q. (By Mr. Dyer) Mr. O'Neal, did you ever work for Darlington Manufacturing Company? A. Yes, sir.

Q. What was your job there? A. Oiler.

Q. You were an oiler? A. Yes.

Q. What room did you work in? A. Weave room.

Q. How long did you work for the company? A. Approximately 8 years.

* * *

[515] Q. All right, did any supervisor ever talk to you about the union? A. Yes.

Q. Who? A. Mr. Cox.

[516] Q. Dewey Cox? A. Yes.

Q. How many times did he talk to you about the union, once or more than once? A. He talked to me a couple of times about it.

Q. Do you remember when the first time was? A. Well, it was just before the first meeting at the spring. Just a few days before the first meeting.

Q. Where were you at the time? A. In his office.

Q. How did you happen to be in his office? A. He called me in there.

Q. What was the conversation? A. He asked me what I thought about the union, and I told him I thought it was a pretty good thing if the people knew how to handle it, and he said he knew Mr. Milliken enough that if a union come in there he would shut the mill down, and that is all he said at that time.

Q. All right, how about after that time, when was the next time Mr. Cox spoke to you? A. I imagine it was in June.

Q. In June? A. Yes.

Q. The first part of June or last part? A. Well, I will say it was the first or second week in June, something like that.

[517] Q. Where were you? A. We were on the job.

Q. What was the conversation at that time? Do you remember what the conversation was? A. Not right at present I don't recall.

Q. Was anything said about a union meeting in the conversation? A. Yes.

Mr. Price: We object, he is leading the witness.

A. He asked me about it.

Mr. Price: We object, the witness said he could not remember and he went back and asked him what, prompted him.

Trial Examiner: The record will show that the witness was, or the record will indicate that counsel submitted the subsequent question. Have you answered the question?

A. He asked me would I go down to that meeting on Sunday and let him know how many of his fellows was down there.

* * *

[520] CHESLEY H. LLOYD, a witness for and in behalf of General Counsel, upon being first duly sworn was examined and testified as follows:

Trial Examiner:

* * *

Q. Your address? A. Route 4, Darlington.

Direct Examination

Q. (By Mr. Dyer) Mr. Lloyd, did you ever work for Darlington Manufacturing Company? A. Yes.

Q. What was your job there? A. Card hand.

* * *

Q. How long did you work for Darlington Manufacturing Co.? A. Three and a half years.

Q. Was that continuous employment? A. Yes.

* * *

[522] Q. Did any of the supervisors ever talk to you about the union? A. Yes.

Q. Who? [523] A. Charlie Williams.

Q. Was he the only one? A. Well, on the day of the election?

Q. Just a second, is Charlie Williams the only supervisor that ever talked to you about the union? A. Well, Mr. Hammonds on the day of the election was in the water house and I said, "Well, maybe by night we will know

how it goes", and he said "Yes, the ones that vote for the union is voting to lose their jobs."

Q. Was that the morning of the election? A. Yes, the morning of the election.

Q. What about Charlie Williams, when was it he talked to you about the union? A. Nearly every night.

Q. For how long a period? A. Well, right after they started to have the union meetings right until the mill closed.

Q. Right on until the mill closed? A. Yes.

Q. He talked about the same thing or different things? A. Well, mostly it would be the same thing that it would close if the union went in and Roger Milliken was a big man, he did not have to run under the union.

Q. Was that the main thing that Williams talked to you about? A. Yes, most of it.

[524] Trial Examiner: Did the witness say that it was?

Mr. Dyer: He said that was practically every night from the time the union started up until the mill closed down. How about after the election, did Williams act differently after the election?

A. I remember one night he talked to me after the election, he said "Go shake hands with William Johnson", and I asked him why, and he said, "Well, he got you out of a job, did he, he was the cause of the union man coming here."

* * *

[525] GENEVA ELMORE, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. And your address? A. 118 Calhoun Street, Darlington, S. C.

Direct Examination

Q. (By Mr. Dyer) Mrs. Elmore, did you ever work for the Darlington Manufacturing Company? A. Yes.

Q. What was your job there? A. Spinner.

Q. How long did you work for the company? A. I came there the last time in 1952.

Q. Had you worked there prior to that? A. Yes, I come there the first time in 1939.

Q. Altogether approximately how long did you work for the company? A. I don't know, I would say about 18 years.

* * *

[526] Q. Did any supervisor ever talk to you about the plant shutting down? A. Yes Sir.

Q. Who did? A. Mr. Kinsey.

Q. When was that? A. That was, I was laid off on the 17 of November, and that was the next Wednesday.

[527] Q. The 17 of November? A. Yes, No, October.

Q. The 17 of October? A. Yes.

Q. When did you have your conversation with Mr. Kinsey? A. The next Wednesday.

Q. The following Wednesday? A. Yes.

Q. That would have been the 24, is that right? A. Yes, I guess so.

Q. Where did you have this conversation with him? A. In the office.

* * *

Mr. Dyer: I will ask the witness. What was the occasion for you talking to Mr. Kinsey?

A. Well, I had worked one day Monday and Tuesday and was laid off on Wednesday and went the next Wednesday to draw my check for those two days.

[528] Q. Went to the office to get your pay? A. Yes.

Q. Where were you talking to Mr. Kinsey? A. In his office.

* * *

Q. (By Mr. Dyer) What was the conversation? A. When he give me the check he said, "I told you folks if you voted the union in that Milliken would close the mill down, and see what you got yourself into."

Q. Is that all he said? A. He said he went around and around and talked to the people and asked the people not to vote that union in because the—Milliken would close the plant.

* * *

Q. After the election was a petition circulated in your department? A. Yes, there was.

Q. And you worked on the second shift? A. Yes.

Q. Who circulated the petition? [529] A. Mrs. Thames and Mrs. Katherine Meadors.

Q. Are they from your shift? A. No.

Q. What shift were they from? A. They were from the morning shift.

Q. Was Mr. Kinsey in the department at the time they were walking through the plant? A. Yes, he was.

Q. Did you see him anywhere close to him? A. Yes, I did, I saw them about ten foot apart.

* * *

MRS. DOROTHY WELCH, a witness for and in behalf of General Counsel upon being first duly sworn was examined and testified as follows:

Trial Examiner:

* * *

And your address? [530] A. 564 Cleveland Street, Darlington.

Direct Examination

Q. (By Mr. Dyer) Mrs. Welch, did you ever work for Darlington Manufacturing Company? A. I did.

Q. How long did you work for them? A. Approximately 20 years.

Q. What was your job? A. Weaver.

* * *

Q. Was a petition ever brought to you in the plant following the election? A. Yes, there was.

Q. Did you ever talk to any supervisors concerning this petition? A. I went to Mr. Dixon after the petition was passed.

Q. And did you have a conversation with Mr. Dixon concerning the petition? [531] A. Yes.

Q. What was the conversation? A. I told him that I wanted my name off of the petition, that I had made a mistake when I signed the petition and that I had been misled and misinformed about it and I wanted my name off the petition.

Q. Go on? A. He said that he would try to find the boy and send him to me and I could take my name off the

petition but that Mr. Milliken would not run the mill with the union.

Q. Was there anything else? A. I said, "Well, if they want to get the union out," I said, "You don't know who voted for the union and who voted against it but what about the people that you think voted for the union", he said "I can't promise anybody anything".

* * *

[535] NEWEY LEE, a witness for and in behalf of General Counsel, upon being [536] first duly sworn was examined and testified as follows:

Trial Examiner:

* * *

Q. Your address? A. 103 Cotton Street, Darlington, S. C.

* * *

Direct Examination

Q. (By Mr. Dyer) Mr. Lee, did you ever work for Darlington Manufacturing Company? A. I have.

Q. What was your job? A. Slubber hand.

Q. How long did you work for the company? A. 18 years all but the time I was in the army about three years.

* * *

[537] Q. Did any supervisor ever talk to you about the union? A. They did.

Q. Who? A. Bill Hammonds or William Hammons and Weldon Truett.

Q. Lets take William Hammonds first, when was it Hammonds talked you? A. On the morning just before the election.

Q. You mean on the morning of——? [538] A. Yes the morning of the election just before we went out to vote.

Q. Where were you at the time? A. In the water house.

Q. What was the conversation? A. Well, I went in there to smoke and time I got in there he told me that he knew there was no need to talk to me because my mind was made up but he wanted me to know that the union could not help none of us, and if we voted it in Roger Milliken would shut the mill down.

Q. Did he say anything else? A. Not right then. I walked out and then he came out and told me it was time to vote.

Q. That was all the conversation you had with him? A. Yes.

Q. Now you say Buck Truett talked to you? A. Yes.

Q. When was that? A. That was after the election.

Q. How long after the election? A. Maybe a week or around a week.

Q. Where were you at the time? A. In the water house.

Q. What was it Truett said to you? A. He told me all of us was warned if we voted it in, Roger Milliken would close the mill down and that is what he intended to do.

[539] Q. Did he say anything else? A. Well, not right then. I went on back to my job and he followed me out to the job.

Q. Did he continue the conversation out there? A. Yes.

Q. What was the conversation out there? A. Well, he told me that, we got to talking about it, and I told him that I was told that if we voted, that we had a right to vote like we wanted to and the government give us an election and the company would not give us one, and I did not believe the government would let him close that mill down, and he told

me that Roger Milliken owned the mill and he had plenty of money and did not have nothing to worry about, and the government and nobody else could tell him what to do.

* * *

[540] *Cross Examination*

* * *

[544] Q. (By Mr. Poag) When did you first start discussing Mr. Oeland with other people? A. Right after he changed the hours down there.

Q. And that was when? A. I don't remember, but not too long after he came to Darlington.

[545] Q. It was when? A. It was not too long after he got here.

Q. Not too long after he got there, what do you mean by changing hours? A. What did he mean by it?

Q. Yes? A. I don't know, I did not ask him.

Q. What do you mean by changing hours? A. Well, I mean changing the shifts when we were supposed to go to work.

Q. Up until that time you had gone to work at what time? A. I went to work, let me see what shift I was on. I went to work at 10 o'clock at night and got off at 6 in the morning.

Q. And he changed the hours to what? A. From 12 midnight until 8 in the morning.

Q. And you did not like that? A. No, and a lot of other people did not like it and we got up a petition.

Q. Got up a petition? A. Yes.

Q. Asking him to do what? A. To please change the hours.

Q. Change them back to what they had been? A. Yes.

Q. And do you know how many people signed that petition? [546] A. Ninety-five percent if I am not mistaken.

* * *

[548] Mr. Poag: So that when the union promised the employees down there that the employees would control the work load that certainly appealed to you, did it?

Mr. Dyer: Object again, there has not been anything stated that the union promised anybody anything in the whole proceeding.

Mr. Poag: Well, you had confidence in what the union said in its letter, did you? Did you Mr. Lee?

A. Well, I believed them.

Q. You thought that they were telling you the truth? A. Yes.

* * *

[552] MIRIAM W. JOHNSON, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner: Give your full name?

* * *

Direct Examination

Q. (By Mr. Dyer) Mrs. Johnson, did you ever work for Darlington Manufacturing Company? A. Yes, I did.

Q. What was your job there? A. I was spare battery filler and also smash hand.

Q. What room did you work in? A. In the weaving department.

Q. How long did you work there? A. I would say around ten years.

* * *

[553] Q. Now did any supervisor ever talk to you about the union? A. Yes Sir.

Q. Who? A. Mr. Nesbitt.

Q. And when was that? A. I would say around the middle of May, 1956.

* * *

Q. (By Mr. Dyer) What was the conversation? A. Well, he approached me on my job and he said, "Miriam, why are you for the union", and I said, "Well, how do you know [554] I am for the union", and he said, "Well, by your expression. The way you act", and I said, "Well, no one will ever know how I vote on the day of the election because it will be by secret ballot", and he said, "I know that but I hate to see you people make a mistake", and I said "Well, I don't want to make a mistake, I want to do the right thing", and I also told him that I was praying and asking the Lord to direct me in making the right decision, and he also asked me if I would go around and help talk to the other people against it and I did not respond, I did not tell whether I would or would not, and He said that he had seen too much of unions coming in and the plant closing down and little children having to suffer as a result.

* * *

[556] F. L. HUTSON, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

[557] Q. Your address? A. Route 4, Darlington, S. C.

Direct Examination

Q. (By Mr. Dyer) Mr. Hutson, did you ever work for Darlington Manufacturing Company? A. Yes.

Q. What was your job? A. Card hand.

Q. How many years did you work for the company? A. About six and a half I think.

* * *

[558] Q. Did any supervisor ever talk to you about the union? A. Yes.

Q. Who? A. Charlie Williams and Buck Truett.

Q. Did they talk to you together or one at a time? A. Well, they both talked to me together one time and Mr. Charlie Williams talked to me about it practically every night.

Q. Let's take Mr. Williams, when did Mr. Williams start talking to you about the union? A. Time they started having the union meetings.

Q. For how long did he keep talking to you about the union? A. Right on until as long as the mill run until I was laid off practically every night.

Q. Practically every night? A. Yes.

Q. Was the conversation the same or different? A. It was practically the same thing.

Q. What was it? A. That the mill was going to shut down on account of us voting the union in was what he talked about after the election, before the election it was always if you vote the union in the mill is going to shut down and won't run under a union.

Q. And you said Mr. Williams and Mr. Truett talked to you together? [559] A. Yes.

Q. When was that? A. That was after the election, I don't know exactly how long afterward.

Q. Would you say a week or two weeks or three weeks? A. Probably two or three weeks.

Q. Where was that conversation? A. That was in the water house. The night I came in early about 11 o'clock and they were both in the water house when I went in there and we just started talking about the union and the mill closing down and all, and they told me that the mill was positively going to shut down and would not run with the union in there, just practically the same thing they had told all the time.

Q. Did Mr. Truett ever say anything to you about the plant? A. Well, nothing much only that it would shut down. He told me I had just as well hunt another job, that that mill was going to shut down after the election.

Q. How long after the election was that? A. I don't remember.

Q. He told you to start hunting another job? A. Yes.

* * *

[560] MRS. MAGGIE REED, a witness for and in behalf of General Counsel, upon being first duly sworn was examined and testified as follows:

Trial Examiner:

* * *

Q. And your address? A. Route 5, Darlington, S. C.

Direct Examination

Q. (By Mr. Dyer) Mrs. Reed, did you ever work for Darlington Manufacturing Company? [561] A. Yes.

Q. What was your job? A. Spinning.

Q. And how long did you work for the company? A. About 25 years.

* * *

Q. Did any of the supervisors ever talk to you about the union? A. Mr. Kinsey did.

Q. When was that? A. It was the day before the directors meeting.

Q. Pardon? A. The day after the board of directors meeting.

Q. Where were you at the time? A. Trial Examiner: What meeting was that?

Mr. Dyer: Was that the board of directors meeting after the union election?

A. Yes.

Q. Do you remember how long after the union election that was? [562] A. No, I don't.

Q. Was it the one on September 12? A. Yes, I believe so.

Q. Were you at your work? A. Yes.

Q. What did Mr. Kinsey say? A. He told me he had not talked to me but he reckon I was in with Cook and all the rest of them and he had told them that if we voted the union in——

Q. Speak louder? A. He told me if we voted the union in, they would close it down and said he told us that and said he hoped we would all be satisfied.

Q. Did he say anything else? A. No, sir, that is all.

Q. Did he say what would happen to the building? A. He told me they were going to close it down and sell the machinery and make a warehouse out of the building.

* * *

[563] Q. Did any of your supervisors ever talk to you about a petition? A. Mr. Kinsey.

Q. Mr. Kinsey did? A. Yes.

Q. When was that? A. I don't remember the date but——

Q. Do you remember about when it was? Was it after or before the election? A. It was after the election, the petition they were taking around and said they would keep the mill running and he told me he was glad I signed it, that it did not have anything to do with the union but I don't remember the date that it was.

* * *

MELVIN BENENHALEY, a witness for and in behalf of General Counsel, upon being first duly sworn was examined and testified as follows:

[564] Trial Examiner:

* * *

Q. Your address? A. Route 1, Darlington.

Direct Examination

Q. (By Mr. Dyer) Mr. Benenhaley, would you speak up nice and loud so we can all hear you. Did you ever work for the Darlington Manufacturing Company? A. Yes, I did.

Q. What was your job there? A. Sweeper.

Q. How long did you work for the company? A. About two years.

* * *

Q. Now did any of the supervisors ever talk to you about the union? A. Yes Sir.

Q. Who? A. Mr. Williams.

Q. When was the first time you remember that he talked to you about it? A. When the union first started organizing.

[565] Q. That would be back in April or May? A. Yes, March or April I think.

Q. Where were you at the time? A. I was in the mill.

Q. What did Mr. Williams say to you? A. He asked me had I signed a blue card.

Q. What did you say? A. I did not say anything.

Q. Did he say anything else? A. Yes, he said "You know yourself Mr. Milliken would not run the mill under a union."

Q. Did he say anything else? A. No, not then.

Q. Did he ever talk to you about the union after that? A. Yes, Sir.

Q. When? A. It was a few days after the election.

Q. A few days after the election? A. Yes.

Q. Where were you? A. I was in the mill.

Q. What did he say? A. He said McDaniel did not believe that the mill was going to close down, he said that he was the craziest grown man he ever seen.

[566] Q. Did he say anything else? A. Yes, he said you see what you people have done by voting the union in, you will all lose your jobs.

* * *

[567] EUGENE MCDANIEL, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. Your address? A. Route 1, Darlington, S. C.

Direct Examination

Q. (By Mr. Dyer) Mr. McDaniel, did you ever work for the Darlington Manufacturing Company? A. Yes.

Q. What was your job there? [568] A. Creeler.

Q. In what room did you work? A. The card room.

Q. How long did you work for the company? A. About a year and nine months.

* * *

Q. Mr. McDaniel, did you ever wear a union button in the mill? A. Yes.

Q. Did any supervisor ever talk to you about it, the union button? A. Yes, Charlie Williams.

Q. When was that? A. The night before the election.

[569] Q. What did he say? A. He came up to where I was working and looked at the button I had on, and he said "I did not know you was one of them pushers."

Q. Was anything else said? A. Well, he said, I said "If that is what you want to call me that is all right", he stepped back off from me and then took a little book out of his pocket and wrote something, I don't know what he wrote and went on.

Q. Did he say anything else? A. No, not at that time.

Q. Did he ever talk to you about the union after that? A. Yes. After the election he did.

Q. How long after the election? A. It was a few days, I don't remember exactly how many.

Q. Where were you at the time? A. I was on the job.

Q. What did he say to you? A. He walked up to where I was at and said, "Well, you see what the union has done for you, I hate it", and I said, "What do you mean", and he said, "What, you have not heard?", and I said "What", and he said, "They put us out of a job, and me out of a job and all the rest of us out of a job", and he said "They are going to close the mill down." I looked at him and said "How", and he said "That is right." And I said [570] "What you mean they are going to close", he said "They are going to close down", and I said, "Yes, I heard a rumor", and he

said "Rumor Hell," he said, "They are going to shut down and sell the machinery." I said "Well, if they are, I want to put in an application now to—for a job to help move it out". He said, "Well, I guarantee you won't get any job here", and walked away.

Q. Did Williams ever talk to you about the union after that? A. The night that I was laid off.

Q. When was that? A. The night of the 17th.

Q. The 17 of October? A. Yes.

What did he say at that time? A. He came up to where I was at and said, "Well, tonight is your last night", he said, "Your job is finished but you should not be worried about it, you helped bring it in here."

* * *

[573] MRS. FRANCES LENORA BOAN, a witness for and in behalf of General Counsel, who stated to the Court that she did not swear on oath, was asked by the Trial Examiner, "You solemnly affirm the testimony you give to be the truth, and the whole truth and nothing but the truth?" The witness stated "Yes".

Trial Examiner:

* * *

Q. Your address? A. Route 5, Darlington, S. C.

Direct Examination

Q. (By Mr. Dyer) Mrs. Boan, did you ever work for Darlington Manufacturing Company? [574] A. Yes sir.

Q. What was your job? A. Spinner.

Q. How many years did you work for the company? A. Approximately eleven.

* * *

Q. Did any of your supervisors ever talk to you about the election? A. Mr. Kinsey.

Q. That is the union election? A. Yes.

Q. And when was that he talked to you? A. He talked to me on the job on the 5 of September.

Q. What was the conversation? A. He showed me a picture and on the picture it had two people and they had voted for the CIO and their privileges [575] had been taken away from them, and also on the picture it showed two more people that voted against the CIO, and they had their privileges, and on the picture he had it wrote out in his pen and it said, "Vote No for CIO".

Q. Did he say anything to you? A. First he asked me was I a Christian, and I told him yes, that I was, and he handed me the picture and said, "I'm sure you don't want this to happen to you", and I taken the picture and looked at it and read it and whenever I got through with it I put it back on the spinning frame, and he came back along after a while and got the picture and left.

* * *

Q. Following the election was anything said to you about a petition? A. Yes. Mr. Kinsey came to me.

Q. Did Mr. Kinsey talk to you about the petition? A. No, Katherine Meadors brought the petition.

Q. Did you have a conversation, were you asked to sign the petition? A. Yes.

Mr. Price: We object to that, Your Honor, this lady in question is no supervisor at all and had no authority at all in any way to do anything like that in the mill.

Trial Examiner: Well, we will accept this much, another [576] employee brought a petition to this witness.

Q. (By Mr. Dyer) Did you have any conversation with any supervisor about the petition? A. Yes, Mr. Kinsey came to me after Katherine left and he said that he did not see my name on the petition, and said he wanted me to know that it was not against the union. He said that he did not see why I did not put my name on it, but I did not say anything to him.

Q. Did he say anything else? A. Not at that time.

Q. Did he say something at a later time? A. Yes, he came to me on the 12 of September, I believe right after the directors meeting, had had the meeting in Spartanburg, and he told me that they had tried to talk with all of us about the union and said we would not listen to him, and said now that we had voted the union in that the mill was going to close.

* * *

[578] DOUGLAS TAYLOR, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. Your address? A. 113 Cotton Street, Darlington, S. C.

Direct Examination

Q. (By Mr. Dyer) Mr. Taylor, did you ever work for the Darlington Manufacturing Company? [579] A. Yes, I did.

Q. What was your job there? A. Weaver.

* * *

Q. How long did you work there? A. Approximately two years.

* * *

Q. Did any supervisor ever talk to you about the union? A. Yes, Sir.

Q. Who did? A. Mr. Dewey Cox.

Q. When? A. It was about a week before the election.

Q. Where were you? A. I was on my job.

Q. What was the conversation? [580] A. He came up and told me that someone had told him that I had got several to sign union cards and asked was it true, and I told him yes, and he said "Well, I would not be in your shoes for a million dollars because if the union comes in the mill is sure to close and everyone will lose their jobs".

* * *

Q. Did Mr. Cox talk to you about the union after that? A. Yes, he talked to me about a week after the election.

* * *

Q. Where were you at that time? A. On the job.

Q. What did he say then? A. He told me that he had told me before that the mill would close if the union came in, I mean if it was voted in, and on several occasions he told me that it would close if the union was voted in.

* * *

[582] GRACE TRUETT, a witness for and in behalf of General Counsel, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. Your address? A. 652 Churchill Street, Darlington.

Direct Examination

Q. (By Mr. Dyer) Mrs. Truett, did you ever work for the Darlington Manufacturing Company? A. Yes.

Q. How long did you work there? A. Eight years.

Q. What was your job? A. I was a spooler.

* * *

Q. Did any supervisor ever talk to you about the union? A. Mr. Frank Kinsey did.

Q. Did he talk to you once or more than once? A. Two times.

[583] Q. Did he, do you remember when the first time was? A. Just a few days before the election.

Q. Where were you at the time? A. I was on my job.

Q. What did Mr. Kinsey say? A. He come out there where I was working and told me that none of the union people would ever be able to get a job anywhere, and then after the election just a few days, he come back and told me that if I would get a petition and get the union people to sign it that we were sorry that we voted the union in, and that we would not have anything else to do with it, the mill would run on, but I did not do that.

Q. Now those are the two converations you mentioned? A. Yes.

Q. You said the other one was some time after the election? A. Yes.

Q. About how long? A. It was after the people had taken the other petition around and I did not sign it.

Q. It was after the first petition? A. Yes.

* * *

[592] CHARLES KELLY, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Trial Examiner: And your address?
The Witness: 117 Cotton Street.

Direct Examination

Q. (By Mr. Dyer) Mr. Kelly, did you ever work for Darlington Manufacturing Company? A. Yes, sir, I did.
Q. What was your job there? A. I was a filling doffer.

* * * *

Q. How long did you work for the Company? A. Approximately three years altogether.

* * *

[593] Q. All right, did any of the supervisors ever talk to you about the Union? A. Yes, sir, they did.
Q. Who? A. Mr. Passmore, and Mr. Kinsaul.
Q. Mr. Kinsaul? A. Mr. Kinsaul was Second Hand before Mr. Passmore.
Q. I see. Let's take Mr. Kinsaul first, then. What was your conversation with Mr. Kinsaul? A. I believe it was on—around May 21st.
Q. All right, where was it? A. Well, I had finished doffing my frames and I was caught up for a little while and stopped down at the bottom of the stairs leading to his office and he called me up to his office to show me production sheets.
Q. What was his conversation with you? A. Production was high and he complimented me on my work and while we were talking he asked me how I felt for the Union and I told him I was for the Union, I had signed [594] a blue card, then he told me he didn't figure the Union would

do us any good because if it came into the plant it would cause nothing but confusion and hard feelings.

* * *

Q. How about Mr. Passmore, did you ever have any conversation with him about the Union? A. Yes, sir.

Q. One or more than one? A. I had, I believe, two conversations with Mr. Passmore about the Union.

Q. All right, when was the first one? A. The first one was around August 15th.

Q. Of what year? A. Of 1956.

Q. And where was that? A. That was down at the bottom of the stairs.

Q. All right, and what was the conversation? A. He asked me how I felt about the Union. In other words, he said, "Kelly, are you for the Union?" I said, "Yes, sir, I am, 100%," and he just turned and walked away from me.

Q. How about—you mentioned a second conversation. When [595] was that? A. Yes sir, he approached me approximately a week later and showed me a picture and on his picture there was a colored man leaning over a white woman. She was sitting at a table. He told me that's all the Union wanted to do, was integrate the negroes and the whites.

Q. Was that all the conversation? A. That was all of that conversation, but he did talk to me again.

Q. He did talk to you again? A. Yes, sir.

Q. When was that? A. The day of the election. See, I went to work at 12:00 o'clock and that was on the 6th of September and I wore a Union button to work and he approached me right before the lights flashed and during that time the lights flashed I had started to my job.

Q. What did the lights flash for? A. The lights flash, that's the time for you to go on your job, that's the way they

change shifts. I had started to my job and he stopped me at the door and told me I could not go to my job with that badge on. I asked why, and he told me orders that came up from the big office that we couldn't wear the badge there on my job. I told him I was, and if he wanted it off he could take it off. He didn't do [596] so, he turned around and walked away.

* * *

[602] NORA LEE KING, a witness for and on behalf of General Counsel, first duly affirming to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

* * *

Trial Examiner: Your address?
The Witness: Route 5, Darlington.

[603] *Direct Examination*

Q. (By Mr. Dyer) Mrs. King, did you ever work for Darlington Manufacturing Company? A. Yes, sir, I did.

Q. What was your job there? A. Spinning.

Q. How long did you work for the company? A. Well, the last time I worked 14 years.

Q. How long did you work for the company altogether? A. I started to work when I was 7 years old and I worked two years and learned, and my mother died and I went to the country, stayed with my sister, and I stayed there until I was 10 and I came back. I was born in 1900; 1910 I went back to work, got me a job.

Trial Examiner: You worked for the company off and on for a long time?

A. Yes, sir, from 1910 util 1922, then I married and worked 14 years the last time.

* * *

Q. Did any of the supervisors ever talk to you about the Union? A. Yes, sir.

[604] Q. Who? A. Mr. Shirley and Mr. Kinsey.

Q. Let's take Mr. Kinsey first. A. All right, sir.

Q. When did Mr. Kinsey first talk to you about the Union? A. The first time, it was the time the "super" came up there.

* * *

[605] The Witness: It was the 12th of September, now I remember, that's right.

* * *

Q. Where were you at the time? A. On my work.

Q. What did Mr. Kinsey say? A. He came down there in a big hurry and walked up to me. I was spinning, and he said, "Well, Nora——," said, "You and your daughter now has both voted this old Union in here and they are going to close the mill down," said, "the 'super' was out there in the office just now and he was so mad he was just cursing, and he said that—I don't want to repeat the words but I'll say the number—he said he didn't give a "D" if the mill did close and he didn't give a "D" if the union people perished to death," and he said that and he said that Mr. Kinsey also asked him did he blame him for it, said, "You don't blame me for it, do you?" Said "I blame you 90%." I said, "No, not 90%, but a hundred." That's what I told Mr. Kinsey.

[606] Q. Is that all there was to the conversation? A. At that time.

Q. Did you have a further conversation with him? A. Yes, sir.

Q. When was that? A. That was on the day of carrying that petition through, that was—I don't know the date exactly, but I guess all of you know the time there was a petition carried through the mill.

Q. And did Mr. Kinsey talk to you about—what did he talk to you about? A. Well, he came up there, was checking the humidities, and he had a little jar in his hand with the water where you put the thermometer in to cool it off, and he said to me, "Nora, did you get a good blessing last night?"

Trial Examiner: Get a what?

A. A good blessing, and I said, "I sure did, I really had a good blessing when I went home. I prayed and the Lord really blessed me." He said, "Well, all right, now, while you are thinking of these little children that's going hungry and barefooted and naked and being taken out of school on account of this old Union being in here," said, "you think you feel justified about it?" And another thing, said, "I knew that you was persuaded to join the Union but," said, "I was really surprised when your daughter Frances [607] Boan, joined it." And he also said this, he asked me this, said, "You haven't gotten any more influence over your children than to let them join the Union?" And I didn't say nothing. I let him talk on——

* * *

Q. (By Mr. Dyer) Let's go on to something else, Mrs. King. Did you have mentioned to you the petition that was being circulated in the mill? A. Who did?

Q. Did anyone mention the petition to you? A. Yes, sir.

Q. Did you have any talk with a supervisor about the petition? A. Yes, sir.

Q. Who? A. Miss Ida Thame came to me with a petition. Mr. Kinsey came up there at the time she was going to talk with me about it and he began to go on about Mr. Welch being 100% for it and had had his name first put on there at the top, and then he also said that Mr. Cook was 100% for it and he [608] was down there talking to him about Mr. Welch putting his name on the petition and Ida told me that——

Q. (By Mr. Dyer) Just a second, we are not taking an interest in what Mrs. Thame told you. Was that your conversation with Mr. Kinsey about it? A. Not all of it.

Q. What was the rest of the conversation with Mr. Kinsey? A. He said, "You and your daughter is afraid someone is going to hurt you." I said, "We are not afraid, we have already been hurt."

Q. What did Mr. Kinsey say, anything? A. That's all he said.

Q. Did you have a conversation with any other supervisor about this petition? A. Yes, sir.

Q. Who? A. Mr. Shirley.

* * *

Mr. Poag: Object to any phone calls.

Q. (By Mr. Dyer) Just what Mr. Shirley said to you about the petition. Did you go to see Mr. Shirley or did he come to see you? A. I was sitting on the waste box waiting for light [609] changing time and he always goes around to see how the work was.

Trial Examiner: What did Mr. Shirley say to you?

A. He came up there and I asked him what kind of a paper was it that was going around, that I wanted to know, and he said he didn't know what kind of a paper it was, he hadn't seen it, or didn't care, but he wanted me to put my name on it. I told him no, I wouldn't, because when I put my name on that paper my job would be gone and he didn't say anything, then I went on to my work.

Q. Did you have any other conversation with Mr. Shirley? A. Yes.

Q. When? A. On the 17th of October.

Q. 17th of October? A. Yes, sir.

Q. All right, and where were you at that time? A. On my job.

Q. What did Mr.—you say Mr. Shirley talked to you at that time? A. Yes, sir.

Q. What did he say? A. He was going—making a round again, looking at the work and he walked up to me, just as he was going through the heads, and he said—I call them heads, the smolders—[610] asked me how my work was running and I told him it seemed to be doing all right and we kept on talking, and I said, "Well, I think I can talk to you a little bit today." I said,—I did cry because I had been mistreated, and I said, I told him I didn't think I would be a cry baby today, I could talk with him. He said, "Well, I see you didn't sign the petition like I asked you and you are going to suffer." And I told him well, it had taken me a long time to study over the Union situation, and making up my mind getting into it, and so it would take me a long time to get out of it.

Q. Did Mr. Shirley say anything else at that time? A. He said he was here until Christmas and he was looking for him another job.

* * *

[612] MRS. MARIE TRUETT, a witness for and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner: What is your full name?

The Witness: Marie Truett, Route 5, Darlington.

Direct Examination

Q. (By Mr. Dyer) Mrs. Truett, did you ever work for Darlington Manufacturing Company? A. Yes, sir, I did.

Q. What was your job there? A. Filling batteries in the weave room.

Q. How long did you work for the company? A. Well, right about 15 years, I reckon.

* * *

[613] Q. Any of the supervisors ever talk to you about the Union? A. Yes, the night of the election.

Q. Who? A. Mr. Troy Tobias.

Q. Where were you at that time? A. On the job.

Q. What did Mr. Tobias say? A. He brought a paper around with yes or no on it and he showed it to me, he said, "You know how to vote, don't you?" And he took his pencil and marked "X" across the "NO". I said, "Yes, I know how to vote."

Q. Was there any other further conversation? A. He said, "This company won't have a Union in it," said, "if a Union comes in here it would shut down."

* * *

[614] VIOLA WEATHERFORD, a witness for and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner: What is your full name?
The Witness: Viola Weatherford, Route 5.

[615] *Direct Examination*

Q. (By Mr. Dyer) Mrs. Weatherford, did you ever work for Darlington Manufacturing Company? A. Yes, sir.

Q. What was your job there? A. Spinning.

Q. How long did you work for the company? A. From March of '51 until '56, October 19th.

* * *

Q. Any of the Supervisors ever talk to you about the Union? A. Yes, sir.

Q. Who? A. Mr. Shirley.

Q. When was that? A. It was about a week before the meeting of the stockholders committee.

Q. All right, and where were you at the time? A. On my job.

Q. What was the conversation? A. Well, he walked up to where I was standing and I asked him how much longer I had to work on the evening shift and he said, "From the looks of things now—" said, "you'll [616] be on the evening until the mill is liquidated."

* * *

A. Said, "I decided to let you run a roping out of these frames," and I asked him, I said, "Mr. Shirley, do you really believe they are going to shut the mill down?" Said, "Yes, ma'am, I knew when the Union went in they would shut the mill down," said, "as far as these frames you're running," said, "we already have a sale for them," said, "I'll tell you what kind of a man Mr. Milliken is, he figures that a man that will vote for a Union won't give a man a day's work."

* * *

[619] ROGER MILLIKEN, a witness for and on behalf of the Union, being first duly sworn, was examined and testified as follows:

Trial Examiner: Your full name?

The Witness: Roger Milliken.

Trial Examiner: Your address?

The Witness: 234 South Fairview Street, Spartanburg, South Carolina.

Direct Examination

Q. (By Mr. Zimny) Mr. Milliken, are you associated with the Darlington Manufacturing Company? A. I am.

Q. In what capacity, sir? A. I'm President of the Darlington Manufacturing Company.

Q. Are you on the Board of Directors of the Darlington Manufacturing Company, as well? [620] A. Yes, I am.

Q. Mr. Milliken, how long have you been in the textile business? A. Since 1939.

Q. So that you have a good acquaintance with the operation of a textile mill? A. I hope that I have.

Q. And does your acquaintance include the operations of the textile mills in New England as well as in the south?

* * *

[645] Q. (By Mr. Zimny) I show you Union Exhibit 4 for identification, which is a photocopy of an article appearing in The Spartanburg Herald, Spartanburg, South Carolina, on January 20, 1956, and which purports to quote certain portions of a speech you delivered before the Kiwanis Club in the month of January, 1956. Will you examine this and tell me whether or not these remarks were, in fact, made by you? (Counsel showed document to wit-

ness). A. I think that the newspapers have used their privilege to take certain remarks that I made and put them together in the form of sentences here.

* * *

[647] Q. (By Mr. Zimny) Does that represent the substance of what you said, Mr. Milliken? A. This represents some of the things that I said in that talk, which was considerably longer than that which is quoted here.

* * *

[650] Trial Examiner: Mr. Milliken, did you on the occasion of your remarks before the Kiwanis Club in Spartanburg, say that Walter Reuther and his brother once went to Russia to study? I'm going to read this entire thing:

"Reuther wrote to a friend in America, addressing him to 'keep up the fight for Soviet America.'"

Did you thereafter say, in the course of the same remarks to the Kiwanians, "Let's fight together to keep this foreign philosophy out of our town. Let's work together to the end that Spartanburg and South Carolina can grow together and demonstrate to the rest of the country the advantages of teamwork between workers and management. That is our secret weapon."?

* * *

[655] Q. Now Sir, how long have you been president of Darlington? A. Since 1944, twelve years.

Q. Now do you take any salary from Darlington as president? A. Yes, I do.

Q. How much is it? A. Three thousand dollars a year.

Q. Were you also a stockholder in Darlington personally? A. I am.

Q. Approximately how many shares do you have? A. Approximately 7100 shares.

Q. How long have you owned those shares in Darlington approximately? A. Over ten years.

Q. Now are you also a director of Darlington? A. Yes, I am.

Q. How long have you been a director of that company? [656] A. Since 1942 I believe.

* * *

Q. Now the other directors of Darlington in September, 1956, were whom, please? A. Jim Oeland, treasurer, was a director, Mr. Nicholson, Mr. Lyles, Mr. Hatch, Mr. Kingsley, and Mr. Minot Milliken.

Q. Now of those directors, did any of them other than Mr. Oeland and yourself receive any salary from Darlington? A. No Sir.

Q. How long have you been in the textile business, Sir? A. May I make a correction, Mr. Nicholson had been treasurer of Darlington Manufacturing Company and was retired on a pension from the company.

Q. When was that? A. He retired I believe in 1951, and the time when Jim Oeland went there as treasurer.

Q. How long, Sir, have you been in the textile business? A. I went into the textile business in 1939.

Q. And have you been constantly in that business since that time? A. Yes Sir, without interruption.

[657] Q. Now what are your duties as president of the corporation, in general? A. As president of the corporation it was my duty to preside over the board of directors when the board met, from time to time I would review the operations of the company with the treasurer, Jim Oeland, and at these meetings we would get together, we would

discuss the operations of the mill, in the period immediately preceding the discussion what our current operations were, and what our prospective operations were.

* * *

[659] Q. Now you made reference to, I don't know whether facts for selling but let me get at it this way. In the operation of Darlington, was there a period of time, some period of time which normally elapses between the receipt of an order on the one hand and the delivery of order on the other? A. Yes, there was.

Q. About how long was that period of time? A. Darlington would generally book orders ahead as far as it was possible to do so, so that they might set up and be able to plan their production ahead with the most time to do it. The backlog of orders that Darlington had varied of course with market conditions, some times they had backlog of six weeks production and some times with backlogs of twelve [660] to fourteen weeks production. As against that total mill capacity now that could mean that on one fabric order they could have a backlog of six months and another one a backlog of two weeks.

* * *

Q. Now what in general were the duties of the treasurer? A. In the textile industry the position of treasurer is comparable to that of president in most other business organizations with which the public is generally familiar. Darlington was no exception.

* * *

[661] Q. (By Mr. Updike) Will you state what the specific duties were, Sir? A. Jim Oeland, who was treasurer of Darlington Manufacturing Company, was responsible to the Board of Directors for the operations of the

mill. He was responsible for the purchase of raw materials, he was responsible for the accepting of orders for sale of fabrics made by the mill. In this connection as treasurer he went to New York regularly to call on customers.

* * *

[662] Q. Now who decided what goods were to be run on the equipment at Darlington? A. Jim Oeland did.

Q. The treasurer did? A. Yes.

Q. Now within the range of your acquaintance with Darlington has it always been called a print cloth mill? A. Yes.

Q. Will you state for the record in general what a print cloth mill produces? In other words what is a print cloth mill or what are print cloth mills, what are print cloths? A. The print cloth mill is a mill that manufactures fabrics which are generally printed in subsequent processes, made out of the finest yarns that can be manufactured using the [663] carding system of manufacture as contrasted with the comb system of manufacture.

* * *

[667] Q. Now will you indicate again in a general way what the physical limits of the capacity of Darlington equipment, in other words the types of cloth, cotton fabrics that the company could not make? A. With the equipment that it had as a print cloth mill, Darlington could not without substantial re-arrangement of its equipment make other items such as denims, ducks, trills and quills, towels, any combed yarn fabrics that would require combs. In other words it was limited to the manufacture of yarns in the print cloth ranges.

* * *

[669] Q. Now Mr. Milliken, I would like to turn to the subject of Darlington's earnings. First of all, do you know about how old the building was? A. I think that the Darlington mill was built around the turn of the century, or slightly before that.

Q. Will you then give us very briefly the background of the Darlington mill from some mile post in its history say for the last 20 or 25 years? Financial earning background is what I am asking for? A. During the early 1930's, the Darlington Manufacturing Company had a very disastrous financial experience, and in 19——

Q. Instead of characterizing it, what was the experience? A. The loss of a lot of money. In 1937——

Trial Examiner: When was this it lost money?

[670] A. In the early 1930's. And in 1937 its financial situation was so bad that it was put through bankruptcy proceedings under "77-B" of the Bankruptcy Act. At that time its selling agent, Deering, Milliken, took common stock for the debt that was owing to it by the Darlington Manufacturing Company.

Q. Was that the stock that Deering, Milliken & Company had according to the record before the Examiner, is that the stock that Deering, Milliken had on September or October 17, 1956? A. Yes, it is.

Q. Will you please continue? A. Following that, the mill had another loss in the 1930's and was constantly in debt to the selling agency. Then came the years of the war, when the Darlington Manufacturing Company made a small amount of money in each year because of the existence of prices ceilings on the product. In the years immediately following the war when there was a great pent-up demand from the civilian population and from the return of service

men for textiles, the Darlington Manufacturing Company made substantial amounts of money in several years, and this period of prosperity for Darlington continued until the ending of the abnormal demand created by Korean war.

Q. That would be about 1951? A. Yes, about 1951.

* * *

[671] A. In the last five years the mill has, Darlington mill has made comparatively small amounts of money, and when the directors met to review the financial history and reviewed the financial history of the last five years, counting the projected loss for the year 1956——

Trial Examiner: Which meeting are you speaking of?

A. The one held on September 12, 1956. The mill had experienced for a five year period a return of 2.8 on the average invested capital during that period. Now——

Mr. Dyer: Was that for the past five years or——

A. For the five years from 1952 through 1956.

* * *

[688] Q. Now what then is the next stage, the lap goes to? [689] A. The lap is then transported to the back of a card.

Q. Now at Darlington how was it transferred? A. It used to be transferred on trucks but in 1956 a lap conveyor system had been installed to facilitate the movement of laps from the picker room to the card room.

Q. All right, was that part of the modernization program that had taken place? A. Yes, it was.

Q. Within the last five years? A. Yes, within the last year in that instance.

* * *

[690] Q. Now during the period 1952 through 1956, was there [691] changes in those mechanisms at Darlington? A. Yes.

Trial Examiner: When was that?

Q. (By Mr. Updike) About when was that, Mr. Milliken? A. I think in the last part of 1955 and the beginning of 1956, new and larger card cans and coiler heads were placed in the front of each card.

* * *

[693] Q. I show you what purports to be two things that I believe are bobbins, are they? A. Yes, they are roving bobbins with roving on them (two large spool type bobbins with white yarn wound around them).

Q. I notice that that one is smaller than the other, can you state for the Examiner on the record the significance of the difference in size between the two? A. The smaller roving bobbin which is full comes from the roving frames that is called a 10 by 5 roving frame. The larger bobbin is made out of a roving frame that is called a 12 by 6½ roving frame.

Q. Now does the difference between these two bobbins that I have before me here, which I think you testified were full, is that right? [694] A. Yes, that is correct.

Q. Does the difference between those two reflect the modernization change at Darlington in the last few years? A. It does.

Q. Can you first tell me what was done? A. I think it was again in the latter part of 1955 or early part of 1956 that the Darlington Manufacturing Company purchased

five 12 by 6½ roving frames from the Whiten Machine Works, and replaced the 10 by 5 roving frames in the mill.

Q. Now will you state briefly for the record the significance of the larger bobbins against the smaller ones in terms of frequency of labor operation at that particular stage of the cotton manufacture? A. I believe that the larger bobbin has on it approximately twice the poundage of the smaller bobbin, and that means that once the roving machine was started up with empty bobbins, it would run twice as long before it was necessary to stop the machine to doff it.

* * *

[695] (By Mr. Updike) All right. Was there any modernization program at Darlington that affected the creel of the spinnng frame? A. Yes Sir, the creels of the spinning at Darlington had been modernized first of all to hold this larger package, and secondly, to make possible a better running of roving to the drafting element on the spinning frame. The bobbin is suspended in the new creel from a clip.

* * *

[697] Q. Now when was the double apron drafting system installed at Darlington, about when? A. I believe that installation started in 1955 and continued through 1956.

[698] Trial Examiner: You mean through the entire year or not the entire year?

A. Up to the time of the directors meeting.

* * *

[701] Q. When you say that the yarn is wrapped on, would you say it is wound on as if the warper was a spool? A. A tremendous spool. It is a very large spool that has an inside diameter of approximately six to eight inches.

Q. That would be the core of the spool? A. Yes, and it has big heads at the end of it which used to be [702] 30 inches in diameter and are now 40 inches in diameter, and this spool is rotating this beam until the yarn coming from the creel has filled it up.

Q. Now when you say they were 30 and are now 40, was that a step of modernization at Darlington? A. That was a step of modernization.

Q. When did that take place? A. In 1956.

* * *

[706] Q. (By Mr. Updike) Mr. Milliken, when we were recessed or before the recess was declared, you were looking at a piece of paper and I was looking for copies of it which I have since found, which is a memo that you were giving to me, was that prepared under your supervision? A. Yes, from the audit statement of the company.

Q. Using it to refresh your recollection, can you find some item that we have overlooked in the course of your statement up to now concerning modernization?

I think I see one under spinning improvement, item 2 which is pneumafil, is that correct? A. Yes, that is correct.

[707] Q. Now to understand what pneumafil is, we have to go back to the drafting equipment on the spinning? A. Right.

Q. Now will you state on the record very briefly what pneumafil is, please? A. Pneumafil is an air suction device which is installed in the spinning room. It consists of a tube with apertures coinciding with the passage of yarn from the drafting element down to the spindle on a spinning frame. If an end breaks on a spinning frame, the pneumafil picks up the untwisted but drafted roving and it is sucked to a box at the end of the frame. This is very important.

Q. May I ask one further question. As long as that end or piece of yarn is broken, the spindle continues to spin without any yarn going on it, is that right? A. Yes, that is right.

Q. The front rollers of the drafting continue to push out or extrude the yarn, is that right? A. Yes, that is right. And it is the function of this pneumafil to draw in that yarn as it is being extruded in, until the worker can come and do whatever is necessary to tie it back in to the spindle, that is one of his functions.

Q. Now will you state what the others are? A. The other function is that the pneumafil performs to effect better distribution of humidity in the spinning room. This it [708] does by bringing the humidity which has been introduced in to the room by humidifiers by pulling the air with the humidity in past the cotton right after it has been drafted, it brings the humidity to the drafting area and therefore conditions the cotton so that it processes better, also pneumafil tends to remove flying lint from the air so that there is lesser accumulation of lint on a spinning frame and through less lint interference with the stock as it is processed. All of these improvements result in a substantial reduction of the number of ends down at spinning.

* * *

[709] Q. Now what else have we overlooked from this memo? A. I think we overlooked the replacement of worn out spindles in the filling spinning frames with new top drive spindles, they [710] don't show on here but it is an installation that took place during this period.

Q. Now in your earlier testimony you referred to the modernization of certain warp spindles and you were asked when that occurred. Do you recall that? A. I do.

Q. Did you check your memory on that during the recess? A. Yes, I checked it with Jim Oeland and I found——

Trial Examiner: Excuse me, which is this?

Mr. Updike: This has to do with the introduction of the ball bearing spindles in the warp spinning frame which I think Mr. Milliken said took place about six months after they were ordered, which was some time in 1954.

A. I found that three quarters of these had been replaced prior to Jim Oeland taking over as treasurer of Darlington, and that only 5,000 spindles were added in the period that I had in mind. But that in the same period all of the filling spindles were modernized which was the reason I was mixed up.

* * *

[713] Q. (By Mr. Updike) Mr. Milliken, you have just drawn to my attention that Company Exhibit 10 does not refer to the new looms at Darlington. Now were those new looms ever put in place? A. No, Sir, they were at the time of the liquidation sale stored in the warehouse preparatory to being installed at the mill, and it would be a bookkeeping practice not to enter machinery into the plant account of the corporation until such time as it had been placed in position, final position and started up and operating machinery. Of course these looms were sold at auction before they were placed in operation, hence do not appear on this specific report which was prepared from the auditor's statement.

Mr. Dyer: May I ask one question? I am not sure, does that mean that they are not included in the total auditor's statement?

A. No, they were never entered in the official records of the company.

* * *

[715] Trial Examiner: Let me ask, approximately what was the cost of installation of the change to top drive spindles and installation of overhead cleaners?

A. The overhead cleaners report here was $34,973.

Mr. Updike: Can you specify the item, under which column or another?

A. We have it cleaning and beam handling.

Trial Examiner: That was in the year 1955?

A. Yes.

* * *

Q. Now Mr. Milliken, each of these steps of modernization had to do with machinery and equipment rather than to the building, itself? A. Yes, that is correct with one exception.

Q. What is that? A. To a place that was being prepared on the ground floor [716] where the supply room had existed, where the floor was being concreted and the wall of the room in preparation for the reception of the fifty-inch looms.

* * *

Q. (By Mr. Updike) Now, directing your mind to changes in [717] the building, had consideration been given at any time during this period to air condition and refrigerating the building? A. The plan had been discussed on several occasions by the directors.

Q. In the course of that discussion, did any question arise with respect to the age of the building or the structure or other attributes of the building that led you either to defer or not to do it, I take it that it was not done? A. It was not done.

Q. And were there such factors, and if so please state what they were? A. Mr. Updike, the approximate cost of air conditioning a textile mill is four dollars a square foot. This would have meant an expenditure of, on behalf of the company of $800,000 to air condition the approximately 200,000 square feet of floor space in the mill, which was a very large sum of money. Darlington is a hot and humid climate in the summer time. The directors felt that if Darlington was to continue in business over a period of time, it would probably be necessary to air condition the mill. But each time the directors discussed the air conditioning, of the mill, they came up against several obstacles, the first of which was economic performance of the mill which did not justify making an investment that was permanent in nature, one that once made [718-a] could not be taken out, and a sum of money substantially the same as that had been invested recently through sale, secondly, the building was not laid out in one rectangular way and one room on each floor, but consisted of a main building with an "L" attached which meant that it was not stream lined as to production layout. The spinning for instance was on different floors, not all together. It was not the most efficient layout that one could look for in a textile industry, and the directors would want to have before commiting themselves to an expenditure as large as $800,000 or ten times their gross earnings for the period of the past five years. Furthermore, the building was an old building, and unlike some buildings that were built at the same approximate era, had much smaller ceilings——

Q. You mean smaller or lower? A. Lower ceilings so that the installation of all of the duct work that goes with air condition systems would have cluttered up the ceiling in a way that would have been more or less im-

practical. And the lower the ceiling is, it is my understanding, the less effective is the diffusion of air brought about by the air conditioning, so that when this matter was discussed as it was several times by the directors, they felt that the future was too uncertain, and the facts concerning the building, itself, were too adverse to justify making such an expensive factor whenever it was brought up, [718-b] it was decided not to proceed with such an expenditure. It was proposed and it was decided not to proceed.

Q. Now with reference to the possibility of the introduction of the higher speed looms, was any consideration given to that? A. It was. The recommendation had been made to the company by engineers that speeders be placed on the looms on the second floor and the speed of the looms increased.

Q. May I interrupt you a minute. Now you said recommendations had been made, are you referring to the Barns Report? A. Yes, I am.

Q. Will you please tell the Examiner the circumstances which led to the retention of Barnes Textile Associates, Inc., in July or August of 1955? A. At one of my periodic discussions with Jim Oeland, namely in the summer of 1955, we discussed our cost in the weave room, wherein Mr. Oeland told me that he was disturbed about the fact that our costs were not competitive with what he had found to be the cost of our competitors, and we discussed what could be done about that, and we decided that it would be a good idea to call in the services of a textile engineering firm that was familiar with weaving practices, efficiency, speed, costs, etc., in a vast number of textile mills and have his organization make a survey of our efficiency, costs, speed, etc., in Darlington and make recommendations to

the [719] management that we could take advantage of if he found that our costs were higher than our competition making the same fabrics out of the same yarn.

Q. Now in the summer of 1955, there had been no reference made to you of any question about a union attempting to organize the workers of Darlington? A. No sir.

* * *

[736] Q. (By Mr. Updike) Now, Mr. Milliken, you have testified this morning to various expenditures for modernization at Darlington and will you state—will you relate those expenditures in the direction of modernization to the problem, if there was a problem, of job assignments? A. The expenditures that were authorized by the Board of Directors to find out if it was possible to make Darlington competitive with other mills was to reduce, number one, the amount of work that had to be performed by the operator; was [737] number two—and this work could be actual machine tending or cleaning; and secondly, the improvements were authorized to improve the quality of the work as it was processed through the plant, so that there would be less breakages which constitute work when these breakages have to be mended and almost without exception whenever a breakage occurs, due to poor quality, and it is pieced up at spinning or pieced up at drawing or roving, a subsequent break takes place in spooling or in weaving, so the objective of the experimental program of modernization, of movable equipment, was to make, to improve the quality, to create less work, so that it would be possible for an individual operator to accomplish more production with no more effort.

* * *

[746] Q. (By Mr. Updike) Mr. Milliken, in the course of your discussions with the Directors at Darlington, both

in September of 1956 and earlier during that year or other years, had you discussed from time to time the significance, with respect to Darlington's earnings, of the job assignments at Darlington? A. Yes, sir.

Q. And specifically in September of 1956 was the subject of job assignments at Darlington under discussion? A. Yes, sir, the main problem in connection with job assignments which was discussed at the Directors' meetings held during the years in 1955, '56, when discussions of authorizing money for the purpose of new machinery was brought up, was the fact that such authorizations were recommended on the basis that if the machinery were installed and operated to advantage by the operators cooperating with the equipment, that savings would be made and would make us more competitive with practices that Mr. Oeland reported he knew were common in terms of job assignments in competing mills and one of the large problems that came before the Directors when they met in September was the fact that we had authorized money for the installation of equipment for the purposes of increasing job [747] assignments and making a saving in cost to make Darlington competitive and perhaps make it possible for us to stay in business against competition and the fact that we were not obtaining the savings it had been anticipated would be forthcoming from these installations.

Q. So, for example, some modernization was begun, I think it was 1951, as shown by Exhibit—Company's Exhibit 10, and again—I guess the first date there is 1952—again in '53 a modest amount; again in '54 there were modernizations. Was there discussion as to whether Darlington was producing what it had been anticipated would be produced from these attempts at modernization? A. That's correct, and it was brought out it was not producing.

Trial Examiner: When was this brought out?

The Witness: At the Directors' meeting on September 12th.

Q. (By Mr. Updike) When you say it was brought out, these discussions with Mr. Oeland on job assignments from time to time with respect to specific jobs? A. No, sir, when Mr. Oeland and I would discuss the matter of cost and job assignments he would discuss his cost per pound, perhaps by department, the fact that he knew from checking with competitive mills that his cost per pound was higher than their cost. Those, in turn, could be broken down, and sometimes we went into the details of the new program as how [748] that would be affected by purchases of machinery in individual departments.

Q. For example that might be a cost per pound for carding and a cost per pound for spinning process? A. That's correct.

Q. How was that related to the job assignments involved? A. Well, obviously the main element in the cost of an operation in Darlington was the labor component and if a job—if an operator was handling 3800 spindles of spinning instead of 2200 spindles of spinning, and they were operating at the same speed in both instances, obviously the one taking care of 3800 spindles would produce more yarn for her efforts than the one running 2200 because each spindle produces the same amount of poundage for a given period.

Q. Now, while you've used the spinning as an example, do the same considerations affect the number of card machines that are—number of cards that are tended by a particular worker? A. Yes, sir, and the number of looms taken care of by an individual weaver or loom fixer.

* * *

[749] Trial Examiner: I think we might ask the witness whether at the Board of Directors' meeting—is this the September 12th?—there was any consideration of whatever there was and then have him tell us what it was.

Mr. Updike: All right.

The Witness: At the Board of Directors' meeting, Mr. Examiner, we discussed the fact, and I brought out the fact, that in my discussions with Mr. Oeland he had told me that our cost of manufacturing by individual jobs and by department were substantially higher than those of our competition and that in spite of the fact that new machinery had been installed in the Darlington Manufacturing Company, it had not been possible to reduce our cost by the amount that had been anticipated because of the fact that—take two examples—the ends down in spinning had been maintained at a higher rate than was the case in mills of competition and had not come down and that the loom stops, the warp stops in weaving had also remained at a high rate and had not come down so it was impossible to assign, on an engineering basis, the number of machines per operator that should have been justified from the installation of that machinery had the quality of the work [750] been performed in the way that it was being performed in competitive plants.

* * *

[752] Q. (By Mr. Updike) Now, if you know, Mr. Milliken, what did these employees do? What was the scope of their duties? A. In the Darlington mill there was a Technical Superintendent who was responsible for the staff functions of the Darlington Manufacturing Company oper-

ations. He had, among other responsibilities, reporting to him Industrial Engineers. The job of the Industrial Engineers and their assistants were to record the quality and the quantity of the production throughout the plant. That meant in the spinning room, under their direction, would be taken what is known as ends down tests and this means a test to determine the number of ends down per thousand spindle hours. That means broken ends for every thousand hours a spindle ran, so that the quality of the work could be observed. By the same token there were those whose job it was to record at intervals the number of breaks that took place on the looms and whether they were warp breaks or filling breaks or mechanical stoppages and to compare these number of breaks and stoppages from time to time so that if there was an increase or a decrease in such number adjustments could be made to correct [753] what had happened, if it was an adverse trend or could study the assignment with a view of allocating the employee over the number of machines or spindles that it was possible for her to attend, doing an amount of work that had been studied on an engineering basis and which included an allowance for permanent time.

Q. Now, sir, did you learn from time to time from Mr. Oeland what the results were of these observations? A. Yes, sir.

Q. During the early part of 1956 or in some periodic basis, is that right? A. One of the most important things that we discussed when we got together was the progress——

Q. First of all, was it on some periodic basis? A. Yes, sir.

Q. And would these be oral reports or how were they rendered to you? A. Generally, when we got together either at the mill or in New York, or in Spartanburg at my office.

Q. All right.

Trial Examiner: The question was, was it oral or in writing?

The Witness: Generally oral.

Mr. Updike: I took i the answer was oral.

Q. (By Mr. Updike) Now, did these discussions go into [754] detail with regard to these comparisons or were they discussions of the cost of producing goods at Darlington or what form did they take or did it vary from time to time? I've asked three different questions in my endeavor not to lead the witness.

Trial Examiner: The question has been asked. Now, let's avoid the component on the endeavor. What was the nature of those discussions?

The Witness: Generally to ask Mr. Oeland if he had made progress in reducing his cost, and cost ends down per thousand spindle hours and warp stops are probably the two single most important indications of what constitutes these two important jobs of spinner and weaver. I would ask him what the ends down per thousand spindle hours was or what the loom stops, warp stops per loom were and if progress was being made with the installation of the new machinery, in reducing them and making possible the handling of additional looms and spindles by the workers without additional work.

* * *

Trial Examiner: Before we get to that, the witness has told us that from time to time he discussed this with Mr. Oeland and asked whether progress had been made. I'm [755] interested in any response to those inquiries.

* * *

A. I guess we probably discussed this specifically every three months and Mr. Oeland reported that generally that some progress had been made but nothing like the progress that we had expected or knew could be made or that he knew could be made from the installation of the same equipment.

* * *

Trial Examiner: We—before we leave this, I'm still interested in Oeland's report. Mr. Oeland reported progress [756] but nothing like the progress that could be made?

The Witness: That's correct.

Trial Examiner: As a result of those installations?

The Witness: And as against the goals that he had set for Darlington to be accomplished.

Trial Examiner: And approximately when would you say Mr. Oeland made such reports to you?

The Witness: I think, Mr. Buchanan, we discussed this specifically in early February of last year, in May of last year, and in July of last year.

Q. (By Mr. Updike) Now, did Mr. Oeland report to you any view or basis of mind that he had with respect to the failure to measure up to what he had hoped for, his goal? A. Yes, he did.

Mr. Dyer: Limit that to some time.

Mr. Updike: One or more of these meetings to which he has just testified in answer to the Examiner's question.

Trial Examiner: The answer is yes and when was that, is that what you want?

Mr. Updike: Yes, sir.

The Witness: The next question that I would ask at these times, Mr. Examiner, of Mr. Oeland, was "Why do you feel that we haven't been able to achieve the results that you had hoped we would achieve?" And Mr. Oeland told me that he felt that there was a minority of operators in the plant [757] who were not cooperating with him and with his supervision in doing the best that they could with the new machinery and that as a result the quality of the stock was not what it should be, and the efficiencies of the machines were not as high as they should be and that he had noticed this from the time he first went to Darlington. It was a factor that he hoped would improve as he was there longer, but that as far as he could see that it was there and it was a very conscious impediment to his attaining the results that he had hoped to be able to achieve.

* * *

Q. (By Mr. Updike) Mr. Milliken, just before the recess you testified to a conversation with Mr. Oeland concerning a group of employees which in his view—I'm just giving the substance of my recollection of it—group of employees that in his view were resisting the deriving by Darlington of the benefits of the modernization that was being put in or [758] had been put in and Mr. Dyer, during the recess, asked me when that conversation was. Now, would you put on the record when it or they were? A. I think that Mr. Oeland told me that at each of the three meetings I referred to earlier, namely, in January, late January or early February, in May and July when we met and specifically discussed the progress that Darlington had made towards achieving its goals in cost reduction.

Q. Now, I believe you also had reference to conversations with him early after his arrival at Darlington? A. That's correct.

Q. Were they to the same effect in substance? A. That's right.

* * *

[779] Q. (By Mr. Updike) Do I understand that the Company has gone, then, from making fancies into making what might be called a plain staple of an unusual construction? A. Of a very high quality carded broad cloth which was embossed by the same customers. Now, as the technology, the know-how, of the embossers improved, they found that instead of having to use 112x60 construction, they could get the same results by using 109x58, provided it was a little bit heavier and that is the reason why in 1955 the mill was able to sell 16,000,000 yards of this construction to customers that had previously bought from the waffle piques and the piques. In fact, Darlington manufactured the 109x58, had the best breaking strength of any mill supplying this trade and, therefore, got more than their share of this business through having made that special quality, but then you will notice that in 1956 that fabric started to peter out, Number 1. Other mills had learned how to make the 109x58 of a good breaking strength, but primarily the loss took place owing to the fact that the finishing plants, in [780] further improving their technology, had found a way to emboss waffle piques and piques on 80 squares which, as I stated earlier, is the workhorse of the print cloth industry and which is manufactured by most efficient mills at the lowest, at very low cost, costs that Darlington could not achieve.

Q. Now, looking then at Company's Exhibit 13, as an entirety, and as the Company went from one construction

to another construction to a still different one in an effort to find a market where Darlington's goods could be made and sold at a profit, what effect, if any, do those changes in construction have upon the cost of production? A. It costs money to change from one construction to another and the fact that a mill has to make a lot of changes raises their cost on even their staple items because they have to maintain extra personnel to take care of these changes. You will notice that in 1955 the mill made 13 other styles and in 1956 14 styles in addition to those listed above.

Trial Examiner: Where does that appear?

Mr. Updike: At the very bottom of the column.

The Witness: And this, in spite of the fact that in 1956, in attempting to find markets for Darlington's products, they were running the largest number of styles of any year and one of the styles, the 109x46 poplin which they started [781] running for the first time——

Q. Which number is that? A. Number 17—was sold to two customers for Bermuda shorts and other sports wear and these two customers were Cone and Lowenstein and they advised us that they could no longer purchase this fabric in the 40 inch width because they had found that they could made cutting savings by buying the same fabric 44 inches in width from our competitors and thus we were faced with the fact of a declining business on the only staple that had gone through the last five years, namely the 99x44 poplin, the 109x58 broadcloth.

Q. Will you please refer to them by the numbers on Company's Exhibit 13? It's harder for us to follow. A. Number 1 on Company's Exhibit 13, then the staple, Number 14 on the list, namely the 109x58 broadcloth which had

been developed was petering out because of the changing technology which permitted the making of embossed fabrics on standard 80 squares and the other larger item that the mill sold in nine months of 1956 was a poplin that we could no longer make sales ahead on because of the fact that our customers refused to buy the 40 inch goods which Darlington was at that time limited to making.

Q. Now, what was the position in 1956 of Darlington with respect to the Fancies business which it had been doing in [782] '51? A. The fancy business had almost entirely disappeared and therefore the mill was faced with the question as to whether they could find any other fabric on which they could sell goods and the only fabrics that we believed could be sold that the mill could make were the standard low count broadcloth, the 100x60's, the 100x58's, and the 80 squares which are made in tremendous volume in the larger size print cloth mills in the industries that had costs considerably below Darlington's.

Q. Now, Mr. Milliken, while these technological and other changes that you have referred to were going forward at Darlington, were there developments also occurring in the direction of imports such as from Japan? Wait a minute—— A. Yes, there were.

Q. Now, will you please state to the Examiner the basis for your knowledge, if you have it, or information concerning these facts and the extent to which those facts were known to and shared among the directors of the Darlington Company? A. The threat of Japanese textile competition to the American textile mills has been well publicized. It was a matter of great concern to me and I was one of a number of men in the textile industry who went to Washington on several occasions to try and seek a remedy from our Govern- [783] ment to this import problem.

The problem consisted mainly of the fact that during the war the Japanese textile industry——

Q. Are you referring to the so-called Korean War? A. I was talking of the second World War. The Japanese textile industry had been reduced to where they had a million and a half spindles ready for operation at the end of the war. At the end of last year, if my memory serves me correctly, they had in place almost eight million spindles which were all of new construction with all the auxiliary cards, drawing, roving frames and looms together with them.

Mr. Dyer: When you say last year, you are referring to '56 or '55?

A. The end of '55, I think that was. It can therefore be said that the average age of the machinery in the Japanese textile industry was much less than the average age of the machinery in the American textile industry. The average wage paid to the Japanese textile operator was thirteen and a half cents an hour so that they had as modern, if not more modern, machinery than we have which they had bought at cost averaging approximately 50% of the amount that American mills paid for similar machinery. They had very splendid modern mills which were very efficiently operated.

Most of the employees were young women between the ages of 16 and 22 who lived in barracks trying to accumulate [784] a small amount of dowry to make them attractive wives. The situation was compounded by the fact that in the Spring of 1956 the American Government recognized the fact that because of the price support program in existence on American cotton, the American cotton farmer was losing his traditional share of the export market because the same quality of cotton was being grown in in-

creasing quantities in Mexico and Brazil and was then selling in the world market at approximately eight to ten cents a pound cheaper than the American cotton could be sold for.

Q. (By Mr. Updike) You mean could be sold to Darlington, for example? A. Anywhere.

Q. Including Darlington? A. Including Darlington, and Darlington was unable to buy the Mexican or Brazilian cotton because there was a United States quota of 19,000 bales on the amount of this cotton that could be imported into this country. Recognizing this loss, the cotton farmer had sustained, the Government decided to subsidize the sale of American cotton to foreign buyers to a point where it was competitive with the world market and this meant that the American Government out of Darlington's and other textile mills' taxes was paying ten cents a pound to the farmers so that he could sell cotton for ten cents less than we were able to buy it to Japanese [785] mills and parenthetically may I say that ten cents a pound represents 25% of the cost of our raw material and in turn the cost of our raw material is slightly more than 50% of our total cost, so the Japanese textile mills were buying American cotton, subsidized by American Government at a cheaper price than Darlington could buy it for, were spending it on the most modern equipment, paying thirteen and a half cents wages and then shipping the fabrics back into the United States at an ever increasing rate and may I say that it cost no more to ship cotton by water from Texas to Japan than it does to ship it by rail from Texas to Darlington, so that——

* * *

[786] Q. (By Mr. Updike) Were the imports from Japan and their effects on the American cotton textile busi-

ness the subject of discussions between you and Mr. Oeland? Were they the subject of any discussions of references at the directors meeting on September 12 or thereabouts, or at the stockholders meeting of the 17th? A. Yes, they were, Mr. Updike.

> Trial Examiner: As with respect to the discussions between this witness and Mr. Oeland, when were those?

* * *

[787] A. Starting in the Fall of 1955 and continuing up and through the stockholders meeting on October 17.

Q. (By Mr. Updike) Was the effect of the Japanese importation referred to? State whether or not it was referred to in the Directors meeting on the 12th? A. It was, Mr. Updike.

Q. You don't have to say what was said. It's a question of whether it was referred to as a factor—— A. Yes, sir.

* * *

> [792] Mr. Updike: Mr. Milliken now has the particulars with regard to this, so, Mr. Milliken, I ask you whether on Company's Exhibit 10, and drawing particularly your attention to the two figures in the lower right hand corner of the exhibit, $557,000.00 and $722,000.00, respectively, whether the latter figure includes the cost of the 84 new 50 inch looms?

A. The latter figure of $722,000.00 does include the 84 50-inch X-2 looms.

Q. What portion of the $722,000.00 is represented by the cost of the looms? A. $122,600.00.

Q. Likewise, you were asked on questions with respect to the replacing of spindling. A. Filling spindles.

Q. Can you now give us the answer to the question Mr. Dyer asked about filling spindles? A. New filling spindles were put in to replace obsolete spindles at a cost of $37,000 over a period of two years, 1954, 1955.

* * *

[793] cloth from Japan and from other countries. Was there any factor present in, say, September of 1956 with respect to the export market from the United States for textiles? A. Yes, sir, there was.

Q. What, in substance, was that? A. In the same way that the Japanese, with their low cost and new machinery, were able to come into the American market and undersell us, they were able to invade foreign markets into which the United States normally exported cotton textiles and taking advantage of these two items, of course, plus the fact which I mentioned previously, that they were able to buy their cotton 25% cheaper than we were able to do so.

Q. Than Darlington was able to do? A. Than Darlington was able to do. The American textile trade was losing its share of the export markets to Japan so that we were facing a crossfire of the Japanese textiles coming into the United States and Japanese textiles being sold into our foreign markets where we were losing, as an industry, what we had been used to having as a market.

Q. As a corollary of that, would goods that had been formerly going into the foreign market, have to find [794] their outlet in this country, if they found any? A. If possible.

* * *

[796] Q. Now, Mr. Milliken, so that the record may be clear, was this factor of the number of failing mills year by year, the information that you had in that regard, a subject of discussion at the Directors meeting on September 12? A. That is correct, Mr. Updike.

* * *

[801] Q. (By Mr. Updike) Mr. Milliken, using this material or any other to refresh your recollection, will you place on the record your belief with respect—the belief you held with respect to the cotton spindle attrition and mill failures, approximately, in September of 1956? A. Mr. Updike, the cotton textile industry had been going through a period of liquidation of this number of spindles existing in the industry and a spindle is the commonly accepted method by which the size of a particular mill is judged. The recent years following the abnormal demand created by the Korean War saw a sharp increase in the amount of this attrition and I believe that in the twelve months prior to June the four hundred thousand spindles or approximately nine mills the size of Darlington were forced to close their doors.

Q. That's the twelve months period ending June 30, 1956? A. Right, and the number of mill closings as reported during 1956 in the daily press was greater than [802] at any other time in my experience.

* * *

[806] you have the document itself identified in the record, "The rate of mill closings reached a post-war peak in 1954 when 94 plants (exclusive of knitting and small dyeing and finishing plants) went

out of busines, stranding over 35,000 workers. Additional closings in 1955 brought the two year total to 195 mills and 55,000 workers. The woolen and worsted division bore the brunt of the distress as 78 mills, employing 29,000 workers were closed. In the cotton rayon branch liquidations affected 84 plants and 23,000 workers. Some 33 dyeing and finishing plants were also closed."

Trial Examiner: What were those figures, cotton-rayon——

Mr. Updike: Liquidation affected 84 plants and 23,000 workers. Some 33 dyeing and finishing plants were also closed—"throwing 3,000 workers out of their jobs." Mr. Milliken, did I understand your testimony to be that as you understood the facts, the rate of mill failures was even greater in 1956 than in either '55 or '54?

[807] A. That is correct.

Mr. Zimny: Excuse me, what was that last statement that the rate of mill closings was greater in '56 than either '54 or '55?

The Witness: Yes, sir, definitely.

* * *

[809] The Witness: At this meeting in September the matter of what goods would be sold, could be sold, by the mill in the future was discussed and in that connection it was brought out that because of the loss of our traditional market we, the Darlington Manufacturing Company, was going to have to manufacture standard print cloth constructions

and a discussion of the prices prevailing on standard print cloth constructions, which is the component part of this chart, were discussed.

* * *

[811] Q. (By Mr. Updike) Were these mill margins the subject of discussion at the Board meeting? A. Mr. Updike, the prices governing——

Q. The prices then? A. —print cloths were, and in this connection may I say that there is a very standard relationship existing between the selling prices of different print cloth con-[812]structions because a print cloth mill can shift from one print cloth construction to another if a slight premium develops on a certain print cloth construction. The mill tends to increase their looms on that particular construction until the price is equalized. Generally, it is overdone on the price if that particular construction sells at the slightest discount over the average so that in answer to your question the prices of print cloth at which they could then be sold in the market for forward selling to get orders for Darlington was before the Directors.

Q. And was discussed? A. And discussed.

Q. Now, do I understand that mill margins, as such, were not discussed? A. The margin of profit that Darlington could expect to get by selling print cloths at the prices then existing in the markets with our cost of manufacturing was discussed because an analysis of those figures showed that to sell cloth in the constructions in which they could be sold and operate would have meant a substantial operating loss for the months ahead.

* * *

[818] Now, I would like you to state to the Examiner what was the source of the statistical information that was before

the Board, if there was any, in September of 1956 with regard to the prices of goods in the print cloth field. A. Mr. Updike, the Daily News Record carries almost every day a list of market quotations on standard constructions of textiles much the way other groups carry stock exchange quotations daily. This information is read by me daily as I read the Daily News Record and is read by those in the [819] selling organization which sold Darlington Manufacturing Company's goods and, of course, was read by Mr. Oeland. We were, therefore, completely familiar with the serious downward trend of print cloth prices that had taken place since January.

Q. Now, just from your memory, Mr. Milliken, will you tell the Examiner about what had been the course of prices from January of 1956 through, let's say, August of 1956 in that regard? A. There had been a reduction of approximately six cents a pound in the price that print cloth constructions brought in the market over what they had brought in January and there had been no corresponding decrease in the price that mills had to pay for their cotton nor for their manufacturing cost so that the sole factor affecting profit margins, or lack of profit margins, was the decline in the selling price.

* * *

[820] Q. Again referring back to the meeting in September, 1956, I believe you stated that the drop in price was approximately six cents a pound. Will you tell us whether that was a sudden drop or a gradual drop or whatever your memory of it may be? A. My memory of it, that it was a steady drop, perhaps a cent a pound a month for the first six months of 1956.

Q. Now, can you convert for the Examiner the effect on the gross income of Darlington of a drop of one cent per pound over Darlington's annual output? A. Darlington's output in pounds, I believe, in 1955 was [821] 7,900,000 pounds, roughly eight million pounds a year. Hence, a one cent a pound decline that the mill received for the products without a corresponding decline in their manufacturing cost or the price which they had to pay for cotton meant a difference of $80,000.00 a year.

Trial Examiner: That output was for what period?

The Witness: A year.

Trial Examiner: No, the 7,900,000?

The Witness: A year.

Trial Examiner: Which year?

The Witness: 1955, the last complete year, and it was running at that rate, Mr. Examiner, during 1956.

Mr. Updike: So, Mr. Milliken, to be specific, if the drop in the market price from January 1956 to, let us say, April of 1956 was three cents per pound on Darlington's annual output, if that drop were extended over a full twelve months period, the decrease in gross to Darlington would be——

A. $240,000 a year.

Q. (By Mr. Updike) Now, then, referring specifically to the prices obtaining in September of 1956, I believe you testified the drop from January was about six cents? A. That is right.

Q. Now, will you tell the Examiner the effect that had, that decrease in price had in attempting to prophesy the future of Darlington at the Board meeting in September

1956? [822] A. The prices of print cloths, the market prices of print cloth at that time when we met showed us a loss of approximately three cents a pound, so that we were faced if prices were maintained at that level and we saw no reason to believe that anything but an additional downward trend would occur, the mill would have been facing an annual loss of $240,000.

Q. Now, Mr. Milliken, will you tell the Examiner, starting with the time when you were advised of the results of the election at Darlington, what you then did? About when did you hear first of all? A. It was my recollection that on Friday morning, both Jim Oeland and Pete Poag called me up and told me that the Union had won an election at Darlington.

> Mr. Zimny: Mr. Updike, do we have that Friday morning identified by date of the month?
>
> Mr. Updike: Well, now, I'll try to do that. Subject to correction, it is my recollection that the election was held on the 6th of September, that the 6th of September fell on a Thursday. All right, Counsel have agreed on that, so that Friday morning with which your testimony just dealt was the morning following that day?

A. The 7th of September.

Q. Will you please continue? A. When Mr. Poag called me, I asked him if he would come over to my office to meet with me. You'll remember that when [823] Jim Oeland called me and told me that the Union was starting an organizing drive in Darlington, I called up Pete Poag and asked him if he would go down to Darlington and advise with Mr. Oeland during the course of the campaign on the legal aspects of the organizing drive.

* * *

Q. (By Mr. Updike) About when was that? A. In the Spring, I believe in May when, whatever date it was that Jim Oeland first called me to advise me which was my first knowledge of an organizing attempt being made and I asked Mr. Poag if he would spend time down there.

Q. Are we in May or April or back in September? A. We are in May.

Q. April or May, very good. A. Which he did, and he had spent the day of the election and other time, about the time of the election, at Darlington. So I asked him to come over and discuss the situation with me. I asked him why it was——

Mr. Zimny: Was that after the election?

A. This is now on September 7, Friday.

[824] Q. (By Mr. Updike) Has Mr. Poag come to see you or is this still on the telephone? A. I asked him if he would come to see me, which he did, came to my office in Spartanburg.

Trial Examiner: Same day?

A. Same day. I asked him why he thought the Union had won the election. He told me that he believed that the fact that the mill was entering into a program of work assignment changes in line with the installation of new machinery there had developed a resistance which had been built up by the organizers during the course of the campaign and that he felt that there was a great resistance in the minds of the people who had voted for the Union which would mean that they would not cooperate with the installation of work assignments with the new machinery. He also told me that he believed that the promises made in the literature that they handed out which he reviewed with me underlined

the fact that this assignment of engineered work jobs which the Union called the stretch-out was the thing that seemed to be the biggest thing in their mind, and second to that was the emphasis placed in these releases that they had given out and which we reviewed which had to do with wages. I knew——

* * *

[829] A. I talked some more with Mr. Poag and referred to the discussions I had had with Mr. Oeland when we met to review the progress that Darlington had made in reducing their costs and pointed out that Mr. Oeland had constantly referred to a small group of people, perhaps 25% of the operators, who had resisted carrying out work assignment changes and doing their jobs of cleaning and quality as instructed by the management and I asked Mr. Poag if he didn't believe that the fact that the Union had won an election where they had pitched so much of their emphasis on a resistance to what they called the stretch-out, whether this didn't mean that a minority that Mr. Jim Oeland had talked with me about had become a majority and that could we not in the future expect additional resistance over and above that which we had experienced in the past and which had caused us so much trouble in trying to make our cost competitive. He said he felt that was true and that was the conclusion that had to be drawn from this election that had taken place. So following that, I reviewed in my mind the economic factors as I knew them as they affected the future possibilities of making a profit at Darlington, taking in mind the matters that we have discussed this morning, the fact that the mill had lost its traditional market and that the only way we were going to be able to secure orders for the future was to go into the standard print cloth construction where the [830] competition was most

severe; the fact that the imports of Japanese textiles and the loss of our textile export market were adverse factors affecting the general field of textiles and therefore Darlington, as a member of that industry; the fact that mills like Darlington were closing down at an accelerated rate because they, too, were unable to make a profit in these conditions; that in looking ahead at the present prices that print cloths were bringing in the market and knowing our costs, that we were faced with an approximate loss for the ensuing year, if conditions did not change in the market, of $250,000 and I saw nothing that would lead me to believe that conditions would improve as to the selling prices that could be obtained for print cloths.

I reviewed the fact that if Darlington were to continue in business, we would have to air condition the mill. This involved an expenditure of $800,000 to the buildings, which investment could not possibly have been sold at anywhere near the price at which it would take to install it, plus the fact——

Q. (By Mr. Updike) In other words, the cost of installation? A. The cost of installation.

Q. Plus the—Perhaps I could shorten this by asking you in speaking generally did you review the factors to which you have testified before Mr. Buchanan up to now? [831] A. That is right, Mr. Updike.

Q. Then what did you do? A. Then I felt that the—that all of these factors were so adverse that it seemed to me that I sould get in touch with the other Directors and ask them what they thought and to suggest that a meeting of the full Board of Directors be held at the earliest possible opportunity for a review by all of the Directors of these factors, and so I called Mr. Kingsley in New York and he reviewed these considerations—I reviewed these con-

siderations with him and he agreed that we ought to have a Directors meeting. I did the same with Mr. Hatch and Mr. Minot Milliken. In the course of my discussions with Mr. Kingsley, he told me that he would not be able to get to Spartanburg on the following week because of other commitments that he was working on and that not only would prevent him from coming then, but because he was having to visit South America on a matter of business frequently by airplane that he felt he would not be available if following meetings were held and he ought to offer his resignation. And in discussing this, it was suggested that Gerrish Milliken, my brother, might properly—his name might properly be presented before the Board as a replacement to Mr. Kingsley. So I discussed the matter with Gerrish Milliken and all of these men agreed it was important to hold a Directors meeting at the earliest [832] possible opportunity and I think that because of securing air, train accommodations, and so forth, we thought the following Wednesday, September 12, would be a good day if it was satisfactory to the Directors in Darlington.

Q. Those two being whom? A. Three, being Jim Oeland, Mr. Shep Nicholson and Mr. Lyles, and so I called Jim Oeland on Monday morning and asked him if he could check with the other two Darlington Directors to see if a time of meeting in Spartanburg on Wednesday would be agreeable, and he said he would check around and he subsequently called back and advised that it would be and pursuant to that, we come up to the day when the Directors met in Spartanburg.

* * *

[833] Q. I haven't come to the meeting itself. Was there any discussion prior to the Directors meeting with respect to the length of notice if it was to be any stockholders' meeting, of such a meeting? A. I think it was Mr.

Hatch that pointed out that this, of course, was a matter that would have to be decided eventually by the stockholders and I checked with Mr. Poag and he advised that under the laws of South Carolina a stockholders' meeting, considering a matter of liquidation of the sale of the major assets of a business, had to be held after having given, prior to that, thirty days notice, and if I remember correctly, that notice had to be published in a local newspaper as an advertisement.

Trial Examiner: Is this that you just told us about before the meeting of September 12?

The Witness: Yes, sir.

* * *

Q. (By Mr. Updike) All right, now. The Directors meeting of September 12 itself was held in Spartanburg? A. That is correct.

Q. All right now. Will you kindly tell us the substance of what took place there? A. As I remember it, the train from New York was an hour [834] and a half late——

Q. Who arrived on the train from New York when they arrived? A. On the train from New York there were Mr. Hatch, Mr. Minot Milliken and Mr. Gerrish Milliken, and because the meeting had been set up for 10:30 when the train had been expected to discharge these passengers if it had been on time, the Directors from Darlington were there and we had an opportunity to discuss these matters at great detail prior to the arrival of the other Directors. Then, when the other Directors came and we gathered together, we once again reviewed the pertinent facts and the conclusion of the group was that——

Q. Well, now, be a little more specific.

Trial Examiner: Was Kingsley at that meeting?

The Witness: No, sir, he was not.

Trial Examiner: Minot Milliken was there, even though he said he would not be able to attend?

The Witness: No, it was Mr. Kingsley who said he couldn't come.

Q. (By Mr. Updike) That's what I wanted to bring out. Was Mr. Kingsley's resignation tendered to the meeting? A. That was the first official order of business and the election of a successor was the second.

Q. Mr. Gerrish Milliken? [835] A. Right.

Q. He was your brother? A. That is correct.

Q. Was he also a stockholder in Darlington? A. Yes, he was.

Q. Now, just give us as best you can, the discussion as it proceeded at the meeting, following the election of Mr. Gerrish Milliken as a substitute Director. A. As I remember it, the first thing that was discussed was the present financial condition of Darlington and I think Jim Oeland was asked what his estimate was at that time for the results of the year which we were then in and which would end on December 3, the first Sunday nearest to November 30 of that year——

* * *

A. Better bookkeeping cut-off—and he, as I remember, advised that his projections, based on the sale price of the goods, was that the Darlington Manufacturing Company would show a loss of 40,000, the first loss since the 1930's. We then discussed the future prospect for an ensuing year [836] along with the line I have outlined here, based on print cloth prices that were then prevailing and our cost, and one by one took up the other items that affected the

general market conditions, and then we turned our attention to our costs at the mill and a discussion of any possibilities that might exist of our achieving lower costs and at that point Mr. Oeland emphasized the fact that he felt that we would be facing an increased amount of lack of cooperation and that where he had hoped that this minority would gradually become smaller and that that was the reason that he had believed there was a chance of experimental program of new machinery work, it had not worked out and he felt the chances of it working successfully in the future looked dimmer than they had been.

Q. Was there any specific reference to the Union literature that has been marked Company's Exhibit 1 through 5? A. I cited quotations from that with which he was familiar and with which I was familiar and which I think Mr. Lyles and Mr. Nicholson were familiar, to support this point of view.

Q. All right, now, in addition to the report from Mr. Oeland, was there discussion around the Board, and if so just give us the substance of it, please? A. I believe Mr. Hatch inquired as to what would be the case if the mill continued to operate even though at a loss, [837] and what would be involved over the next four or five years as to expenditures, capital expenditures, and it was in answer to that that I brought out the fact about the cost of air-conditioning the mill and the fact that there seemed to be a strong trend towards wider goods which would have necessitated the purchase of additional high speed looms and this presented the problem——

* * *

[838] Q. (By Mr. Updike) I distinguished between his remembering [839] that they did say something and his

being unable to remember now what they said. My question here is did Mr. Nicholson participate to some extent, even though you can't remember, what it was? A. I think Mr. Nicholson made the point that when he had been Treasurer of Darlington it had been necessary for him to style the mill around a fancy line of goods because the costs were too high to be possible to compete on the standard print cloth constructions and that if it were true as reported, that we had lost those traditional customers, that from his experience with the mill, Darlington had no economic future competing on the standard items that he had to style away from when he was Treasurer.

Q. All right, now, how did the meeting finally end up? In other words, tell us the rest of what took place and the substance of it? A. A motion was presented to the meeting authorizing the calling of a special meeting of stockholders and in this connection Mr. Oeland, Mr. Poag, who was present as legal counsel, advised that there would have to be public notice of this. Mr. Oeland advised that the Darlington paper was a weekly and that it went to press at 4:00 o'clock that afternoon, I believe, or somewhat earlier, and it was decided to ask him to call the paper and give a notice of the call of the stockholders' meeting to the paper and the [840] officers were authorized to prepare and issue, with Counsel, a proper and legal call for a stockholders' meeting to be held on the 17th of October at which time they could decide whether they wished to accept——

Q. You mean the stockholders? A. —the recommendation of the Directors, that they vote to liquidate, they vote to sell the assets of the mill and enter into an orderly legal liquidation.

Q. Well, was there any discussion about the operation of the mill itself in the meanwhile? A. Mr. Oeland asked

what were the Directors' wishes with reference to procedure by him in the period that would lie between the Directors' meeting and the stockholders' meeting and the Directors advised that because the mill was operating, the prices then prevailing in the market represented a loss to the mill, that, and in view of the fact that he had a backlog of orders sufficient to carry him through this period, operating six days a week, three shifts in the weave room, that he should not ask his selling agency to procure for him any additional orders and that he should run the weave room, run the operations as it had been running for this period. It was in connection with that that he advised that in anticipation of the installation of the 84 new 50 inch looms he had built up an inventory of warp yarn on section beams so that when the looms were installed, there [841] would be that additional warp yarn on hand with which to warp up those looms and he felt that—he recommended that this inventory that had been built up, that that should be used in running the weave room because to make additional yarn at a time when it would have to be subsequently sold at a loss was not in the best interests of the stockholders.

Also at that meeting the Directors asked me, as President, to contact Counsel with reference to having a legal motion that could be adopted by the stockholders if they decided on liquidation which would be the official legal language necessary to comply with federal statutes concerning liquidations and the tax implications that go with it. They also asked me——

Trial Examiner: Who asked you?
The Witness: The Directors.

Q. (By Mr. Updike) Can you remember specifically who? A. I think it was Minot Milliken asked me if I

oughtn't to have read for the stockholders' meeting a proposed plan of sale of the assets should the stockholders adopt the Directors' recommendation to sell the physical assets of the plant.

Q. Now, was there any discussion of acquisition of further raw materials or operations? A. I think I asked Mr. Oeland if we had enough raw material on hand to take care of our production for the time between [842] the Directors' meeting and the stockholders' meeting and he said that he had and I said that I thought that we ought not to make any further commitments until the stockholders had met and made their decision and that also he ought to contact our suppliers of machinery repair parts and other supplies and to the extent possible hold up the orders without canceling them until such time as the stockholders met and their wishes made known.

* * *

[845] Q. (By Mr. Updike) Now, at the conclusion, at the time when the Board meeting reached its decision, can you tell us whether or not the decision was unanimous or whether there were dissents? A. The decision was unanimous, Mr. Updike.

[846] Q. And all of the Directors of Darlington were present? A. All of the Directors of Darlington were present.

Trial Examiner: When you speak of the decision, you mean the decision to recommend liquidation?

Mr. Updike: Yes, sir.

The Witness: Yes, sir.

Q. (By Mr. Updike) Now, between September 12 and October 17, I think you have testified that October 17 was

the date set for the call of the stockholders' meeting; is that in the record?

Trial Examiner: I believe so, testified earlier.
Mr. Updike: I think he did, yes.

Q. (By Mr. Updike) Between those two dates, Mr. Milliken, what developments, in general, occurred? A. During that period the J. P. Stevens Company announced a wage increase to the mills in its company of ten cents an hour and this increase in wages was adopted as a pattern by practically all of the mills in the textile industry. One cent an hour wage increase represented $12,000 a year additional cost to the Darlington Manufacturing Company, hence a ten cent an hour wage increase would have meant additional cost to the Darlington Manufacturing Company of $120,000 a year. Because the mill was operating at a loss, Mr. Oeland and I felt that it would not be protecting the best interests of the stockholders to put in the wage [847] increase at that time while a matter of liquidation was in the process of being brought before them.

* * *

[849] A. I believe that there were 217 stockholders.

Q. And in terms of their geographical location, where were they? A. I think the greatest number were in South Carolina, almost one hundred; that there were then approximately fifty in New York State and the others were scattered over the rest of the United States and I believe that there was one in [850] Scotland.

Trial Examiner: Did you say there were 217?
The Witness: Yes, sir.
Trial Examiner: In all?
The Witness: In all, 100 in South Carolina.

Trial Examiner: You are not giving us the figures of those who attended, are you?

Mr. Updike: I think they are in, sir, are they not?

Trial Examiner: I believe so, Union's Exhibit 2.

Mr. Updike: Yes, sir.

Trial Examiner: It's in evidence. I asked, I haven't seen the exhibit.

Q. (By Mr. Updike) Now, Mr. Milliken, speaking generally, what did happen at that stockholders' meeting? A. At the opening of the meeting a canvass was conducted to see if there was a quorum present and it was determined that there was a quorum present. As I remember it, I opened the meeting by bringing before it the recommendation of the Board of Directors which had been unanimous and then commented in general on the factors that had led them to recommend this procedure, summarizing what we have discussed here before and at that point asked for any questions.

Q. And were there any questions? A. Mr. Mozingo was present at the meeting, holding a proxy that he had obtained that morning and he got up and made a [851] statement from notes and in that statement he said that he felt that this was a very unfortunate thing that was happening in Darlington, that he felt that the management of the mill was to blame for what had happened. He felt that this was the beginning of labor-management strife in South Carolina and he hated to see it happening, but that he felt he would be forced to go out and proclaim publicly that there existed this strife between labor and management and that in his opinion, labor was right and management was wrong. He said that he had understood that the reason the mill

was going to be liquidated, because I wanted to buy the machinery and take it to set up a mill in Venezuela. He made a few other remarks about having tried to secure personally some stock, but not having been able to do so, and I think that that was the sum total of his remarks.

Q. All right, now, who else, if anyone, spoke at the stockholders' meeting? A. As I remember it, Mr. Henry Simpson who had an important ownership either individually or through other companies of which he was the principal, got up and spoke and announced that he was going to vote his stock in favor of the Directors' recommendation to liquidate.

Q. Was Mr. Simpson a gentleman who had given Mr. Mozingo the proxy to appear at the meeting, to be present at the stockholders' meeting? [852] A. As I said, Mr. Simpson owned a number of companies, each——

Q. My question is was Mr. Simpson—— A. —One of his companies gave Mr. Mozingo and he was the person that gave it to him that morning.

Q. Now, Mr. Mozingo has testified here and one of the things to which he has testified is that after the meeting, the stockholders' meeting, was over you had a conference with him and Mr. Buchanan, the Mayor of Darlington, outside of the stockholders' meeting room. Was there a conversation at that time with Mr. Mozingo? A. There was, Mr. Updike.

Q. And will you state the substance of it, please? A. At the stockholders' meeting Mr. Buchanan and Mr. Mozingo were sitting side by side and were conferring together. As soon as the meeting was over I asked Mr. Mozingo and Mr. Buchanan if I could talk with them for a few moments and they said they would be glad to do so, and so I took

them around the corner where we stood up and had a conversation. During this conversation I said to Mr. Mozingo and Mr. Buchanan that I appreciated the fact that he was in politics and had to take certain positions because he was in politics, but that I also believed that he was interested in the best interests of Darlington as a community and specifically of the people who had been employed [853] by the Darlington Manufacturing Company, whose employment was now in jeopardy because of the stockholders' decision to vote for liquidation. I told him that—I told them that I thought it was terribly important to Darlington and for these workers that no publicity of an adverse nature be given out at a time when the management would be trying to secure bidders for the entire property which we would be trying to do in the month that had ensued, and as Mr. Buchanan, Mr. Mozingo had said in the stockholders' meeting, that he felt it was his duty to go out and place his thinking on labor-management strife in Darlington on the public record and that, to me, meant the newspapers. I told him that I felt that that could be a very serious, adverse influence in attracting any other manufacturer to come in and buy the Darlington Manufacturing Company as a going concern, and I further told him that if, by virtue of the action of the stockholders in voting to liquidate because of the seriousness of the economic factors affecting Darlington, if a knowledge of that could become known to the employees who had been resisting management's attempts to be competitive, and if they took those facts to heart and cooperated and were willing to cooperate, another firm might come in, buy the assets, and that would be the best thing that could possibly happen to Darlington.

* * *

[854] Q. (By Mr. Updike) Mr. Milliken, were you present at the hearing last week when various of the Darlington employees testified here in the court room? A. Yes, sir, I was.

Q. With particular reference to statements which had been attributed to overseers at the plant as quoting you, I ask you, sir, whether you ever stated to Mr. Oeland or to the overseers that you would never work the Darlington plant with a Union in it? A. No, sir, I did not.

Q. Did you ever say any words to that effect, in substance?

Mr. Dyer: Objection, sir. That calls for a conclusion.

Trial Examiner: Overruled.

The Witness: I did not.

* * *

Cross Examination

Q. (By Mr. Dyer) Mr. Milliken, I believe you testified earlier that you own some 7100 shares of the Darlington Manufacturing Company? A. At the time of the stockholders' meeting, yes, sir.

Q. And as the President of the Darlington Manufacturing Company you automatically held the position of Chairman of the Board, is that correct? [855] A. By that, you mean did I preside at the meetings? The answer is yes, sir.

Q. Mr. Milliken, you also have a number of other textile interests, do you not? A. I do.

Q. And among them you are President of the Selling Agent of the Darlington Manufacturing Company? A. Yes, I am.

Q. Now, the Selling Agent, Deering, Milliken, owns a considerable amount of shares in Darlington, too, do they not? A. Yes, sir.

Q. I think it's in the record somewhere. It's approximately 41% of the shares, is that approximately right? A. That's approximately right, which they received in view of a debt when the mill went in bankruptcy.

Q. Off-hand, that amounts to 61,500 shares? A. I believe that's correct.

Q. Mr. Milliken, at the stockholders' meeting of October 17, there were approximately 138,000 shares represented, is that approximately right? A. I think it was 93%, if that's the same.

Trial Examiner: What was the total amount of stock?

The Witness: 150,000 shares.

Q. (By Mr. Dyer) So, actually, of the approximate 138,000 [856] shares present there—Let me ask you this, Mr. Milliken, I think one of your positions is President of Deering, Milliken, is it not? A. That is correct.

Q. And in that capacity you were authorized to vote the shares held by Deering Milliken Company? A. In this instance the Directors of the Deering Milliken Company met and the Treasurer of Deering Milliken Company executed a proxy which I voted at this meeting.

Q. In other words, you voted the shares for Deering Milliken Company? A. After I was made the proxy of Deering Milliken by action of the Board of Deering Milliken and Company.

Q. Well, Mr. Milliken, in all the history of Darlington Manufacturing Company haven't you always voted the

shares as long as you have been in position as President of Deering Milliken? A. As proxy.

Q. Is that true? A. I think it is, yes, sir.

Trial Examiner: What percentage of the Deering Milliken stock do you own?

The Witness: Of the stock of Deering Milliken?

Trial Examiner: Yes.

The Witness: Some of it is held by—in trusts for [857] my children and others. To answer, my immediate family own approximately 20% of the stock of Deering Milliken personally, my family and my children.

Q. (By Mr. Dyer) Mr. Milliken, then at the time of the stockholders' meeting in October, just of the stock that you owned and of the stock you held from proxy from Deering Milliken, you had approximately 50% of the voting shares at that time, did you not, of the shares present? A. You say Deering Milliken owned 40%?

Q. 41%? A. 41%, and I owned 7100, which would be approximately not quite 5%, that would have meant about 46% between Deering Milliken Company proxy that I was voting and my own ownership, approximately 46%.

Q. You said it was about 92 or 93% of the stock present, is that right? A. I think that's correct.

Q. So you had just about half the stock there in the person of yourself and in the person of Deering Milliken, is that right? A. As the stock representative. It is my understanding that it takes more than a majority of all the stock to vote on the matter of liquidation.

Q. That was my next question. How much does it actually take? [858] A. It is my understanding that it takes a majority of all the stock outstanding.

* * *

Q. Mr. Milliken, do you know what the average share for Deering Milliken has sold for in the past three or four years?

Mr. Updike: Darlington, you mean.

Mr. Dyer: Darlington, pardon me.

The Witness: About fourteen and a half dollars a share.

* * *

[860] Q. (By Mr. Dyer) Mr. Milliken, in 1951 there was a dividend of $1.50; 1952, .60¢; 1953, $1.00; 1954, '55, .60¢? A. That is correct.

Q. Well, then, on what an investor would pay for your stock, approximately $14.00, in each of those years, he did better than 4½% of return on his money, did he not? A. If that is mathematically correct, that is right.

* * *

[863] Mr. Zimny: May we have the record reflect the fact that the witness is now inspecting the Darlington Manufacturing Company's balance sheet through November 30, 1952.

* * *

[864] Q. I notice that the 1955 balance sheet has the total current assets $2,584,571.26, an increase of about $900,000 over 1952 in assets and I also note that the earned surplus is at a figure of $2,962,462.66, or some $300,000 more than the earned surplus in 1952? [865] A. Yes, sir, and I understand the reason for your puzzlement which I share. In 1954 the earned surplus has jumped on these order statements some $275,000 over what it was on November 30,

1953 and yet the 1954 balance sheet shows a net profit of $73,000 with dividends paid out of $90,000 so that, actually, there was a cash outgo and yet for some reason its earned surplus balance is higher and it must be due to some kind of a bookkeeping transfer of assets that had previously been reserved for somewhere else on the balance sheet and I am not enough of an auditor, I don't know enough as to how to find out where that came from.

Q. Mr. Milliken, just taking two other figures I note here, the total assets of the Company as shown at the bottom of the balance sheet between 1952, 1955, there's a difference of some $400,000, 1955 over 1952. A. I think it's all in this and you are talking about now the capital stock and surplus which reads $3,762,000?

Q. No, sir, right now I'm talking of the bottom figure on the balance sheet under assets, $3,875,399.00?

Trial Examiner: Which one?

Mr. Dyer: Of 1952.

Trial Examiner: Yes.

Q. (By Mr. Dyer) And the one in 1955, the same figure in the same position, $4,285,131.97? [866] A. I submit, however, Mr. Dyer, that figure at the bottom line is a meaningless figure because if the Company were tomorrow to go out and borrow a million dollars, the figure on the assets side in 1952 would have read $4,875,000 and likewise the figure on the liability side would have read $4,875,000, so the important figure is the next to last figure in the right hand column which is the capital—made up of the capital stock plus the earned surplus since the time of reorganization and that figure has jumped from $3,424,000 to three million——

Trial Examiner: No, $3,425,000, on what statement?

The Witness: On 1952, the next to the last figure.

Trial Examiner: $3,424,768.

The Witness: Up to $3,762,000 on November 27, 1955, which cha. ge took place all in one year, between 1953 and 1954, and could not have been due to profits but was due to some kind of a transfer of a reserve and if I could ask Mr. Oeland if he could try to check this for me, maybe we could explain the reason for it later because that's wherein it lies.

Q. (By Mr. Dyer) In any event——

Trial Examiner: I'm not certain I follow you here. You say the jump between 1953 and 1954, I thought you were speaking of the capital?

The Witness: Wait a minute, no, you are right. The [867] one year 1953, and I was reading off the wrong—I was reading '54 statement. There was a profit of $307,000 reported there with one hundred fifty, and a reduction of provision for Federal Income Taxes that had previously set up of another $110,000 and that's the reason for the increase. Those two items, that profit that year plus the reduction of a provision for reserves for prior years which probably was for the year 1950 or '51 as it generally takes three years before the Treasury Department reviews a statement. That's where it is, Mr. Dyer, I'm sorry.

Q. (By Mr. Dyer) Can we review, Mr. Milliken, the figures on the 1952 balance sheet. The profit was—— A. $53,000.

Q. —$53,000, all right. 1953, the profit was—— A. $307,000.

Q. —$307,000. And dropping to 1954 to $73,000? A. $73,000.

Q. Then increased in 1955 to $122,000? A. That is right.

Q. Mr. Milliken, may I say that this 1956 sheet is a little more time consuming and a little differently set up. It appears that the total assets in 1956 were $4,329,000, approximately $50,000 over the 1955 total assets, is that about right? A. Could I see the 1956?

[868] Trial Examiner: What was that figure?

Mr. Dyer: Total assets, sir, about the middle of the left hand page, $4,300,000.

Trial Examiner: All right.

The Witness: That is correct.

Q. (By Mr. Dyer) That's about $50,000 over the '55 figure for total assets, is that right? A. It is, but I submit that that figure isn't an important figure because it can be changed by borrowing money, paying off debts, or anything else. The important figure again is what your capital stock and surplus figure is.

Q. Yes, sir, but was this figure changed by borrowing money or paying off debts? A. Well, I'll have to check.

Trial Examiner: The question is whether the liabilities increased proportionately or equally.

The Witness: All right, the labilities in this figure, $569,000 as against $522,000, so they went up approximately $50,000.

Q. (By Mr. Dyer) Going to another point, Mr. Milliken, I believe you mentioned you had three conversations with Mr. Oeland regarding the future outlook of the plant.

Those were in February? A. Late January, early February; late April, early May and July.

[869] Q. And the conversation you had with him in July was the last one you had with him concerning the outlook prospect for the mill prior to your decision about liquidating? A. No, I think I had one other conversation with him which was when he first gave me his projection of a loss for the year and I think that that conversation took place in August.

Q. In August? A. Yes, sir.

Q. You didn't mention that conversation to us yesterday. Had you forgotten about that one. A. I think that was a telephone conversation. These other meetings I had with him were personal meetings at which we reviewed specific figures and goals.

Q. When was it that you had the conversation in August, do you remember? A. No, it was approximately, probably the first or second week of August.

Q. And what was Mr. Oeland's statement to you at that time? A. That his projection as he figured it for the balance of the year showed that the Darlington Manufacturing Company would end up with a loss of $40,000.

Q. That's the first time he had told you of that? A. That is correct.

Q. Now, when did you first tell the other Directors about [870] this projected loss? A. When I discussed—talking with them over the phone following my meeting with Mr. Poag on September 7, I found that Mr. Minot Milliken knew of it, Mr. Oeland having told him about it on one of his trips to New York.

* * *

[871] Q. Mr. Milliken, Darlington, in 1952 started to change its essential type of output, did it not? You started — [872] Darlington started shifting from one type of fabric to another in 1952? A. I believe that's right.

Q. That continued right on through 1956? A. All in seeking for a staple fabric on which it could operate from year to year.

Q. You started casting around for these other staples in 1952? A. That is right, as the fancy fabrics that we talked about started to become less important in the market as new fabrics took their place, that is correct.

Q. And actually in 1956 you had reached a couple of fabrics but—taken up production on a couple of new poplins, and on the broadcloth? A. As I remember it, we had taken up production on one new poplin, the one I referred to that Lowenstein and Cone bought and told us they couldn't continue to buy because the width wasn't right.

Q. How long actually had the modernization program at Darlington been in operation? A. We started the modernization program in 1952 and kept building up as we went along in an effort to try and become competitive.

Q. Was part of that modernization also the replacement of obsolescent machinery? A. Part of it was the [873] replacement of—I think that's a fair thing to say, yes, sir.

Q. Some of it was improvement on existing machinery to make it more modern? A. That is right.

Q. So actually at the time you started casting around, you also started this modernization program in order to keep up with the market, is that right? A. To be competitive.

Q. Actually, during the period, say, 1952 to 1956, September, approximately how much was spent on that

modernization program? A. As I remember, approximately $750,000.

Q. $750,000? Now, would that include any replacement of worn out machinery? A. Yes.

Q. Approximately how much would be attributed to that? A. Well, I have in mind the 8x4 roving frames that could be considered to be obsolete for print cloth manufacturing which were replaced by five new roving frames at a cost of $14,000 a frame, I think approximately $70,000, then the mill had spent money buying additional cards and additional spinning in order to try and step up their production so that the same amount of overhead could be distributed over a large number of units and a [874] certain amount of the $750,000 total was spent in this way to increase our basic yarn capacity in order to reduce our overhead and for the same reason these 84 new 50 inch looms were purchases because of two reasons, one being the change in the demand in the market which was building up for wider width goods; the second being the fact that if we were, as we thought, going to have to make the more standard print cloth construction which had a higher number of picks per inch, than the fabrics we were making, it was going to require additional weaving capacity to consume the increased yarn capacity of the mill.

Q. Your 50 inch looms were going to help out on the grade cloth you mentioned? A. That was the poplin, I said.

Q. On the poplin too narrow, these 50 inch looms were designed to take up the wider varieties of cloth? A. It was hoped in that particular fabric or some other, yes, sir. The whole market trend is that way.

* * *

[875] Q. And you mentioned a little while ago that if you put in some new looms you would have to put in new floor space and that was supposed to have cost about $400,000? A. That is correct.

Q. Had you gotten figures on building for such? A. No, sir, because we never seriously considered going ahead with such a program because we didn't feel it was economically justified, but I do know from my experience that new floor space costs approximately $8.00 a square foot in standard mill constructions, and it would have [876] required approximately 50,000 square feet of floor space to house the same number of looms that there were on the second floor in the existing building that would have been replaced by these new high speed looms, so 50,000 times $8.00 a square foot is $400,000.

Trial Examiner: Is that the space that was—that would have been taken of was to be taken under your plans by the 50 looms or the 80 looms you had purchased?

The Witness: No, sir, this was looking ahead to what might have to be spent over the ensuing five years.

Mr. Dyer: Mr. Examiner, as I understand it was contemplated future construction over and above that that was necessary to house these 84 looms.

The Witness: What happened was, at the Directors' meeting I think I testified that Mr. Hatch asked the question "What is the mill facing in terms of additional modernization over the ensuing five years if it is to be competitive with what competing mills are doing in the way of lowering their costs?" It was in answer to that question that I brought out the fact that this, in addition to air-conditioning the

mill, as it was we would have to embark on a program of new and higher speed looms and this would require additional building space on the ground because the second floor couldn't support the speed of the new looms.

Trial Examiner: Was it 80 or 84?

[876] The Witness: 84.

Trial Examiner: 84 new looms? Was additional construction necessary to put those in operation?

The Witness: Yes, sir, and that was in process; a wall was being ready to be torn down, a floor level that had been the floor level of the supply room lowered, and it was going to be adjacent to the existweave room with a concrete floor.

Q. (By Mr. Dyer) Mr. Milliken, you said there was approximately $775,000 spent on modernization. When was the major portion of that money spent? A. I think that the largest amount of it was authorized in the last part of 1955 to come into effect in the balance of the year ending 1956.

Q. In other words, four hundred or five hundred thousand dollars was supposed to be spent in 1956? A. I think it was $250,000 plus the looms, one hundred twenty-two, probably three hundred seventy to four hundred thousand dollars, that is right.

Q. That was all to be spent in 1956? A. It would all have been paid for in 1956. It was all ordered, I believe, with the exception of the looms which was the last item in it, probably July of 1955.

Q. The looms were ordered in the first part of 1956? A. I think they were approved at the Director's meeting [877] in January of that year.

* * *

[878] Q. Mr. Milliken, how long were the Board of Directors in meeting in September, 1956? How long did that meeting take? A. The one on September 12?

Q. Yes, sir. A. I think that the train got in and the meeting started [879] at about 12:00 o'clock and if you will remember I had been with Oeland and Mr. Lyles and Mr. Nicholson since 10:30 when the meeting had been called for originally, and I think that the meeting of the Directors adjourned probably about 1:20, 1:15.

Q. So a little over an hour for the meeting? A. I would say an hour and fifteen minutes, or so.

Q. Do you remember any other business that was discussed at the Board of Directors' meeting besides what you've already testified? A. I think there was a—some action was taken regarding a quarterly dividend which had been paid by the mill after the Treasurer had checked with the Directors either by telephone or letter to see if it would be agreeable to them to make the regular quarterly dividend of fifteen cents a share without calling an official meeting, because it was impossible to get a quorum of the Directors together and I think action was taken at that time formally approving this action that each of the Directors had individually approved prior to that time.

Q. Do you remember anything else that took place? A. Not right now, no, sir.

Q. Do you remember if there was any discussion—— A. Oh, I do remember one other thing. I think that at that meeting the Directors approved what I believe were [880] three amendments to a pension plan in which the salaried personnel of Darlington belonged, such amendments having been recommended by the bank that handled this pension plan.

Q. Sir, was this pension plan just something between Darlington and the bank, or did it include anybody else? A. The pension plan was a plan entered into between an individual, between Darlington as a corporation and the bank, but in order to obtain the best possible pension payment, pension provisions for the expenditure of a given amount of money, the Darlington Manufacturing Company had joined together with other textile companies so that their losses could be actuarily figured with a much larger basis and thus the insuring bank would not have to set aside as large a reserve out of current contributions by the employee and by the company to provide the benefits contemplated.

Q. And these other corporations you speak of, other textile mills in which you had an interest? A. There were other textile mills that had in common the fact that Deering, Milliken and Company was their selling agent.

Q. I see. You say the salaried employees of Darlington. How far down the line did that go, sir? A. Well, it included, as I understand, the supervision through the overseers plus salaried personnel in the office and laboratories.

[881] Q. Second hands, the rank of second hand, would be excluded? A. The second hands were not on a salaried basis.

Q. Everything above second hands and all office clerical, laboratory clericals? A. Were included, yes, sir.

* * *

[882] Q. Mr. Milliken, were you the one that offered the resolution concerning liquidation? A. I think I was presiding at the meeting, so I'm sure it was someone else that offered the resolution.

Q. All right, who drafted the resolution, sir? A. Mr. Poag, I believe.

Q. And did you give it to somebody else to present since you were presiding? A. I asked Mr.—I believe that the way it went was that Mr. Poag, who was with us, I asked him if he had an official resolution that ought to be passed to comply with state law and he said that he had and I asked if someone would make the motion.

* * *

[884] Q. You said there was a subsequent raise that amounted to what, three or four tenths of a cent? A. That is right.

Q. In March? A. On March 1, 1956.

Q. And to what employees did that go, sir? A. To those who were below the dollar minimum rate that went into effect at that time.

* * *

Q. (By Mr. Dyer) Since this average wage amounted to less than four cents, it would bring your relationship, a ratio to other plants, in South Carolina, even closer, would it not? [885] A. It was my understanding, my recollection, that before the wage increase Darlington wages were three and a half cents an hour higher than the average for the State of South Carolina as shown by the Department of Labor. If a five cent an hour wage increase went into effect at that time and we went up almost four cents, we would have been higher by about 2.4 cents an hour average throughout the mill.

Q. Well, you think you were still higher at that time? A. Yes, I do.

* * *

[889] Q. (By Mr. Dyer) Mr. Milliken, you've referred in your testimony to the problem of Japanese imports and the concurrent problem of Japanese taking away markets for your exports? A. That is right.

Q. How much cloth did Darlington export? A. Darlington, to my knowledge, did not directly export anything, but Darlington's goods, I believe, went into export through the means of the converters and other manufacturers who were the customers of Darlington's greige goods and subsequently finished them. There is a very small, if at all, export business in greige print cloths. Most of the exports are of the same cloths after they have been finished and dyed so that while Darlington's goods probably eventually went into export, a certain percentage of them, I would have no way of knowing that a certain yardage did go into export.

Q. Actually, you have no way of knowing whether any of [890] them went into export or not? A. No, but I do know the total export of the cotton textiles were down.

* * *

Q. And wasn't the main concern of the textile industry in the United States that the Japanese were concentrating on one or two or three industries and hitting them very hard? A. That is correct.

Q. And those were velveteens and ginghams? A. And pillow cases, I believe, made out of print cloth.

Q. And your company manufactured nothing that went into the velveteens or ginghams, is that right? A. No, but we did manufacture broadcloth that went into [891] shirts and blouses and the Japanese were shipping made-up blouses and shirts into this country.

Q. By 1956 broadcloth was one of your minor items? A. It was our largest single item, seven and a half million yards, 109x58.

Q. Yes, sir, you are right. So, broadcloths were a large line. Who was the main buyer for your broadcloth? Who were the main buyers for your broadcloths? A. I think a firm called the American Bleach Goods Company was the largest buyer of our broadcloth.

Q. Do you know what they did with your broadcloth? A. No.

Q. You don't know whether it went into women's dresses or shirts or anything? A. I believe it went into a wide range of uses.

* * *

[896] Q. Mr. Milliken, you've mentioned the pillowcases a number of times. Were any of the goods that Darlington manufactured used in the manufacture of pillowcases? [897] A. I don't believe so.

* * *

[909] Q. I believe yesterday you said that 84 new looms total cost was around $122,000? A. That is the figure that they are on the books of the company and in this order.

[910] Q. Well, in the booklet which I think is General Counsel Exhibit No. 10, the auctioneer's booklet, they were listed at a price which when multiplied out came to $137,000? A. Yes, that is correct.

Q. Was the $137,000 and some odd dollars the actual cost to Darlington? A. No. The figure used in that booklet was the price that a customer would have had to pay in November, 1956, if they had gone out and bought equivalent machinery, in other words, in an effort to get the highest possible price for machinery that was offered for sale, the replacement value at that time was listed in this booklet and there had been an increase in the price between the time that Darlington had their order, almost a year earlier and

the prices prevailing at the time, of the auction for which that booklet was prepared.

Q. Then the Darlington order went in some time in February, 1956? A. I believe it was in January.

Q. Therefore you had them at this $122,000 figure at that time? A. Yes, that is correct.

* * *

[913] Q. During the time from 1954 to 1956 there were a number of work load adjustments at Darlington, were there not? A. There were.

Q. And among the changes made, the spinner operators went from 18 spinning frames to about 27, is that right? [914] A. I don't know the exact figures on this, there was an increase I do know in the job as spinner, filling spinner during this period.

Q And in weaving there was an increase in this category of from 28 to 56 looms and another from 80 to 94 looms, is that right? A. I am not familiar with that, Mr. Dyer. I would assume that was probably true.

Q. There were other adjustments of work loads during the same period say in the spooling? A. Yes, there were.

* * *

[916] Q. I believe you made a statement yesterday, Mr. Milliken, that during the period of 1952 to 1956, that there was no decrease in the cost of manufacturing at Darlington. is that true? A. No Sir.

Q. There was a decrease in the cost? A. Yes Sir.

Q. And during this time some of the decrease in cost was due to some employees being laid off and the output of the machines stepped up, is that right? [917] A. Yes, that is correct.

* * *

Q. Mr. Milliken, do you have an idea of approximately when the work load assignments changed, was that in 1952 or 1953? Do you have any idea about when you started the program? A. Well, I don't wish to characterize that as a program that started at any definite time, it started at Darlington continually trying to improve their cloth. There has been an increase in productivity in the textile industry every year I believe with the possible exception of a year or two during the war, and this was a constant program, and when the Darlington Company made some progress all along, the problem was that it was not making the same amount of progress that the competitors were making by installation of the same type of modern equipment.

Q. My question goes back to this. I thought that most of the changes in work assignments, etc., started at the beginning of your modernization program in 1952? A. Well, I don't wish to have you believe that we did not [918] have any improvements in 1951 or 1950 or 1949 because we did.

Q. Then this program of work assignment change has been in operation practically as long as the mill has been there? A. Yes, that is correct.

Q. Do you recall when your first conversation was with Mr. Oeland wherein he mentioned that there was some resistance to him? A. Yes, I think that too was shortly after he first came down to Darlington.

Q. Now that was in 1951? A. Yes.

Q. And has he reported to you since that time that there was still some resistance to him? A. Yes, some resistance to this program becoming competitive, I don't feel that he reported to me that it was a resistance to him as an individual, but to the fact that there was this great resistance to going ahead with the program that would make it possible for us to be competitive, and a resistance on the part of a

group of employees to carrying out the assignment of jobs, that is component part assignments as they were instructed to carry them out. For instance I remember his telling me at one time that in the roving process a roving tender is instructed to doff the roving from the frame, put it in a box neatly so as not to damage the roving, and that he would see a roving tender throwing the roving [919] box in the truck which of course damaged the roving and caused ends down in the spinning, and that likewise in starting up the roving after an end came down, they were instructed to move the shifter handle very slowly so that the roving would start up without a big jerk on it just as you release a clutch in a car instead of letting it in all at once, by throwing the shifter handle quickly which they did, that they put such strain on the 100 ends of roving that within that roving when you get into spinning you would have 1200 ends down as a result of weakened roving which would prevent a spinner being able to take care of the full number of spindles that she otherwise would take care of if instructions had been carried out through the mill.

Now prior to Mr. Oeland's being the treasurer——

Trial Examiner: When did these things occur, over what period?

A. Mr. Examiner, Mr. Oeland talked to me first about this right after he went down to Darlington, and as I have testified, when we met quarterly to review the progress that we had made, he had a report that the program that he had laid out for the mill had not been achieved, I would inquire as to the reason why we had not been able to do it, he would report to me instances of this kind which had prevented this achievement.

Q. I believe you told us also that while some progress was made the company did not make as much progress as its competitors did with the same machinery? [920] A. Yes, that is correct.

Q. And when did you know that? A. Well, Mr. Oeland, as part of his job would visit the competitors' mills and to find out what they were doing and competitive mills would visit Darlington and by this exchange of information and by discussions with respresentatives of machinery concerns he knew and could communicate to me what other mills were doing in terms of work assignments on comparable types of machinery and that we were far from being competitive with them.

Q. When was this? A. At the quarterly meetings which were set up on a regular basis each last part of January, April, July and October, when we would meet to review the progress.

Q. That was since 1951? A. Yes Sir.

* * *

[922] Q. Now after reviewing the union releases on this Friday, September 6, or 7th? A. Yes.

Q. I believe you said that you asked Mr. Poag if the vote did not mean that the minority had become a majority and would make changing to modernization tougher? [923] A. Yes, that is correct.

Q. And then that was your thought at the time, you asked Mr. Poag the question, is that right? A. I had been down to Darlington and I asked him, yes, if he believed that that is the proper interpretation to put upon the facts of the result of the election.

Q. And he agreed? A. He said that he thought definitely that was so.

Q. And that was also your interpretation, was it not? A. After reviewing it with him it was.

Q. Then, to bring things to another turn then, in your mind the union was a stumbling block to modernization, is that right? A. I felt that as a result of the campaign that had been conducted and the promises and statements made in these letters that had been distributed, that if before we had had some hope, possible hope of achieving competitive course by taking advantage of new machinery that was being put in, that this hope had diminished as a result of the election because a majority of the employees had voted in favor of the union whose principal promise as I read it was that they would help the employees to see that they got control of work assignments, would take the stretch-out, so called, into their own hands, would stop it, would prevent management from going ahead with the work assignment changes.

* * *

[924] Q. Now in this memo on points, I think Mr. Patton was cross examined by Mr. Price, have you seen that memo of points that you made at the October 17 meeting? A. Yes Sir.

Q. Now in that memo of points, you said that the people in electing a union indicated an unwillingness to cooperate on the modernization program, is that true? A. That is correct.

Q. And you based this statement of yours on the way you interpreted from the union propaganda, is that right? A. I base that statement on the fact that running throughout all of this literature was the repeated statement that if they won, had to stop the installation of new work assignments.

Q. If they wanted to stop what they call a stretch-out, the thing to do was vote yes for the union on September 6? A. That's correct.

Q. Then your whole interpretation of the meaning of the union election is based solely on the statements in these releases by the union, is that right? A. Yes Sir.

* * *

[927] Q. Mr. Milliken, I hand you what has been marked General Counsel Exhibit 11 for identification, which purports to be a newspaper release and ask whether this news release was [928] prepared under your direction or do you know who prepared it? A. That is correct.

Q. It was prepared under your direction? A. Yes.

Q. When was this done, do you know? A. Prior to the stockholders meeting on October 17.

Q. Now I notice on this particular line there was some typing inserted? A. Yes.

Q. Do you know when that was done? A. After the stockholders meeting.

Q. And at whose direction? A. At my direction.

* * *

[936] Q. Now one of the factors which you mentioned yesterday was the Japanese imports. Your conception of the Japanese imports goes back a good bit of time, does it not? A. It goes back to the time when the amount of imports started to rise very steeply.

[937] Q. That would be in early 1955? A. Early 1955, yes.

Q. Now do you remember discussing the Japanese imports question in the directors meeting in 1955? A. I don't specifically recall doing that, I believe that I probably did because it was a part of great importance to me.

Q. And the Japanese texile imports had reached their zenith in the latter part of 1955 and the early part of 1956? A. Yes, that is correct.

Q. And were they discussed at the January meeting of the stockholders and directors? A. I believe they were.

Q. And it was at that time that it probably had become most acute in the industry was it not, that is when those turned out to be subsequently the highest month of importation? A. Yes.

* * *

[941] Q. Now you have interest in other textile firms which produce print cloth, do you not? A. Yes, I do, Mr. Dyer.

Q. And you keep in close contact with their earnings in regard to that? A. Yes, I do, Mr. Dyer.

Q. Now taking the name of one of those, Monarch, do you recall what the net earnings ratio to net worth was in 1955?

* * *

[942] A. No, I don't recall the exact ratio, but I do know that the results of Monarch for 1955 were discussed by the directors at their meeting because it had not been a good year and the prospects for the future were reviewed. Monarch was also in the midst of a program of modernization and the [943] management felt that they could expect to get returns from their modernization program because of the cooperative attitude on the part of the personnel in the mill. Actually their prognostication was borne out and in the year ending last December 3rd, Monarch profits were over twice what it was in 1955, whereas Darlington having a profit of $121,000 in 1955, had a projected loss of $40,000 for 1956.

Q. Now you said there was some discussion, was there any proposal concerning liquidation as to Monarch? A. No Sir, there was not because on review of the circumstances, the prospects for the future appeared to be good and the facts to date have borne out the soundness of that prognostication.

* * *

Mr. Dyer: Mr. Examiner, I will ask your indulgence for one further question of this witness because of one of his answers. Now Mr. Milliken, you stated because of the cooperative attitude at Monarch Mills?

A. Yes.

Q. Did the Monarch Mills have a union? [944] A. No.

Q. And just to clear up the relationship with the Monarch Mills, were you president and chairman of the board? A. I am president of Monarch Mills and a director, yes.

* * *

[949] Q. (By Mr. Dyer) Mr. Milliken, besides the receipt of the union sheets, did you ever receive any communication from the union during the period of say while the organization was going on up until the time of the decision to liquidate was made? A. Did I ever receive any communication from the union directly?

Q. Yes? A. I can't remember of any, no.

Q. Actually the only thing that you have from the union then until the time of the decision to liquidate was made was the documents in evidence, Company Exhibits 1 through 5? A. Plus Mr. Poag's interpretation of them.

Q. Plus his interpretation of them? A. Yes.

Q. Nothing else from the union? A. Nothing else from the union that I can recall.

Q. Now in January, 1956, Mr. Milliken, when the board of directors meeting was held and when stockholders meeting was held, the directors at that time had a very good idea about what the eventual cost of the modernization of Darlington would be, did they not? A. By eventual cost you mean what?

Q. You were referring a moment ago to the cost of air conditioning the plant? [950] A. Yes, they did know about the probability or possibility of the necessity of air conditioning because it had been discussed and had been rejected as being unwise expenditure of money because of the uncertainty of the ultimate profitability of Darlington.

Q. What I say is in January, 1956, when the directors met they did make some decision concerning new looms and other modernization? A. Yes, they did.

Q. And they knew that this question of having the plant air conditioned was one that was going to be next along the line in the modernization program? A. Yes, they did, and the reason they rejected authorizing the expenditure for that was because it was an unsound expenditure of the stockholders money, but their investment, their authorization of the investment of money in looms was not an unwise investment, because it held out the promise of cost savings without risk of having permanently lost the money involved because they believed that if things did not turn out that Darlington did not turn out to be able to make a profit that a substantial proportion of the cost paid for the looms could be realized by a sale.

Q. Then also back in January, 1956, at the meeting the directors knew that Darlington was going to have to go to the standard yardage, did they not? The standard count? [951] A. Yes.

Q. Actually that is one of the reasons why you were buying the looms? A. Yes, that is correct. And at that time the price of standard construction was six cents a pound over what it was when the directors met again in September or a difference of $480,000 a year between the economic factors existing in January and those existing in September.

* * *

Q. (By Mr. Dyer) Actually, Mr. Milliken, most of the problems which you took into consideration when you thought [952] over the question of liquidation on September 7th, most of the problems had been with you for a period of years, had they not? A. No sir. Actually the problem of a shifting market had been but it had come to a climax in 1956.

Q. And the problem of eventual modernization had been with you for a number of years, had it? A. It had been rejected as impractical and for the first time Darlington Mills, for the first time since 1930, was faced with the prospect of a year in which they would operate in the red.

Q. And the question of the Japanese imports had been with you for a period over a year prior to this decision? A. Yes, that is correct.

* * *

Trial Examiner: Excuse me, before you leave this, I think you told us that for the first time you were facing a loss in 1956?

A. Yes, that is the first time since 1930 that we were staring a loss in the face.

Q. Let's refer to that as a new factor which you faced in 1956? A. Yes.

Q. What other new factors were there? [953] A. The factor that we were going to have to make the standard

print cloth construction, and that it was no longer going to be possible to avoid making these constructions, and that on these constructions where we would be competing with most modern mills, that had the lowest cost, we would be worse off as against our competitors than on the fabrics that we had been able to secure orders for up until that time.

Q. I thought you had told us that this factor of the need to make standard print cloth in competition with the most modern plants faced you in January of 1956? A. It had and at that time Mr. Oeland and I had a long discussion, should we not put the mill on 80-squares at that particular time, because we would make a profit on them at prices then prevailing, but he recommended that we postpone this decision until such time as the new looms had been installed and in the meantime he tried to secure orders on other styles of fabric, and as you will remember from this chart we ran the most number of different styles in 1956 that we had ever run in an attempt to see whether it was possible to find another fabric that was not standard print cloth and on which we at higher costs could compete, and his attempts to find these fabrics were accelerated as the price on print cloth during the first six months declined and it ran about one cent a month and instead of being able [954] to project a profit from the sale of such print cloths, we were faced with a certain loss if we went into them. But we arrived at September 6th, and looking into the future realized that it was no longer going to be possible to avoid doing this, and that meant with the present prices prevailing in the market at that time that with our costs, that we would have had a projected loss of $240,000, and we saw as we discussed at the directors' meeting no indications that the market condition would change, and as I

have just pointed out, at this time last January and early February when the market was up six cents a point to a year ago——

Trial Examiner: You mean in 1957?

A. Yes.

* * *

Trial Examiner: Could we say then that this factor [955] of the need to make standard print cloth was not new in September or October of 1956, coming into fact in January of this year, but that the lower prices for such cloth in September and October was new?

A. And the certainty of a loss if we went into it.

Q. Now you were asked if I recall to tell about other new factors, are there any others? A. Yes Sir. I believe that there was a new factor to the extent that I thought that this minority of personnel that had resisted new work assignments had become a majority because I believe that that was the basis on which the union had polled a majority of the votes in the election, and that the hope that we had sustained during the period under review that we might be able to get our costs in line with competition was not going to materialize.

Q. Any other? A. I can't think of any other.

* * *

[957] Q. Well, you mentioned that back in 1951 shortly after Mr. Oeland came, the resistance of employees built to change of hours of employees? A. No, I did not mention that.

Q. You did not? A. No Sir.

Q. Let me ask if it is true that approximately ninety-five percent of the people employed at Darlington protested Mr. Oeland's action in changing the work hours? A. I read that in the testimony, yes.

Q. Do you know that that is true? A. Yes.

* * *

[958] Q. Did you ever attempt to find out what the basis of their dissatisfaction was? A. No Sir.

* * *

Q. You told us, Mr. Milliken, that frankly since Mr. Oeland first came there that there has been some element of dissatisfaction and that he has mentioned it to you in a number of conversations? A. No, I did not, I said there had been a lack of cooperation with the installation of new work assignments.

Q. And that went back to a period of 1951 and 1952? A. Yes, from the start of the new work assignments

Q. What is lack of cooperation, do you call it dissatisfaction? A. I call it lack of cooperation.

* * *

[963] *Cross Examination* (By Mr. Zimny)

Q. Mr. Milliken, you have been conversant with the Japanese import problem for many years, have you not? A. No Sir, I had only gotten into this matter starting in the latter part of 1955, and the first eight months of 1956 when I went to Washington on at least four different occasions to meet with other representatives of the industry that were similarly worried by it.

* * *

Q. Now the remaining directors of Darlington Manufacturing Company are more, or were similarly interested

in that Japanese problem in 1955 and prior thereto, would you say? [964] A. In a rather offhand way because it was not as has been brought out in this testimony until the last six months of 1955 that the importation of goods from Japan began to be of tremendous importance. There was a very steep increase in the amount of those imports immediately following the signing by Congress of a new three year renewal of the reciprocal trade act.

Q. That was when, in 1955? A. Yes.

* * *

Q. Wait, when the board of directors held their annual meeting at Darlington on January 17, 1956, you were conversant with the Japanese problem at least as it had reached the height in 1955, were you not? A. Yes, and discussed it.

Q. And you discussed it with the other directors? A. Yes Sir.

* * *

[965] Q. As a matter of fact in the fourth quarter of 1955, had not the shipping of cotton goods from Japan to the United States reached a peak? A. Yes Sir, and that information was not available in January.

Trial Examiner: When was this you referred to?

Mr. Zimny: It reached a peak in the fourth quarter of 1955. Did you know about it in the January 17th meeting? A. Yes Sir.

Q. And did you report that fact at that meeting? A. I did.

* * *

[966] Q. You turned around, I can't hear you. Now in the second quarter of 1956, it was even a greater drop in

the shipment of cotton goods from Japan to the United States than there had been in the first quarter, had there? A. Yes, that is correct.

Q. And in the third quarter of 1956, there was still a further drop from what it had been in the second quarter of 1956? A. Yes, but that information would not have been available to us at the time of the directors meeting.

Q. Did you read that information or have an inkling of it from the reports in the Daily News Record? A. I might have known as of the first month of the third quarter.

[967] Q. As a matter of fact, Sir, don't you at least now know that the shipment dropped from the first quarter of 1956 to the third quarter of 1956 in an approximate amount of twenty-six million square yards of cotton goods?

Mr. Updike: Mr. Examiner, he asks whether he now knows, I have no objection to going into what we all now know if it is going to apply to everything, but if the test is what was known at the time the decision was taken, then I submit the question is not a proper one.

* * *

[969] Trial Examiner: I think your question relates to the month by month first for the third quarter which includes the month of September and how the witness or anybody could have that information before October is not quite clear.

Q. (By Mr. Zimny) Well, did you have it before October 17? A. I doubt if we had the September figure before then.

Q. Did you have the August figure? A. I think we did.

Q. Did you have the July figure? A. Yes.

* * *

[979] Q. Do you remember reading, Sir, the speech or perhaps you were present when Sherman Adams, Assistant to the President, addressed the annual meeting of the Northern Textile Association at Fort Smith, New Hampshire, on Thursday, September 27, 1956? A. No, I was not.

Q. Did you read his speech in the press? A. I did.

Q. You were aware of that speech then on October 17 at the stockholders meeting? Of the Darlington Manufacturing Company? A. Yes.

* * *

[988] Q. (By Mr. Updike) Now Mr. Milliken, in the course of your cross examination, you were asked about whether Darlington paid fees to the directors, and you were unable to answer.

Q. Do you know now what the fact is having sought out the information during luncheon recess? A. I have sir, and the fee paid to each director for each meeting was $40.00.

Q. And was there ever anything in travel allowance paid to any director? A. No Sir.

* * *

[989] Q. Now you were also questioned about whether at the directors meeting of September 12, there was either prepared in advance or prepared subsequently the particular form of resolution appearing in those minutes concerning the recommendation to the stockholders that Darlington be liquidated, and you were uncertain at that time as to whether you had or had not asked Mr. Poag to do it before or at the time of the meeting. Have you refreshed your memory by talking to Mr. Poag during the luncheon recess with respect to that? A. I have.

[990] Q. What were the facts? A. Mr. Poag tells me that at the meeting he was asked by me to prepare subsequent to the meeting the proper language to conform with the South Carolina law covering the motion that had been presented and passed by the directors of recommending to the stockholders that they vote favorably on the question of liquidation, and that he prepared such a statement following the meeting.

* * *

[993] Q. Now I am going to ask the question in reverse, Mr. Milliken, to what extent if any, and in what respect if any did the union election or the election of the union on the 6th of September constitute a factor in calling the board meeting and the decision of the board? A. It constituted a factor to the extent that I have outlined, the discussion that I had with Mr. Poag on September 7th involving the interpretation of what the election meant and in which regard he stated that he believed that the union had [994] won the election because of the promises made to the people of Darlington that if they elected the union, installation of new work assignments would be put under their control and that the company would be stopped from going ahead with the program of modernization, and because of that I called the other directors, reviewed with them all of the factors, and it can be said that the election with this factor in it caused the directors to review all of the factors making up the economic picture of Darlington, and the possibility of making or losing money in the future.

Q. To be specific, am I to understand that the election caused the review but did not cause the liquidation? A. That is correct.

Q. Now between the directors meeting of the 12th of September and the stockholders meeting of October 17,

were there any new or additional factors? A. Yes, there were. In the beginning of October a general wage increase of ten cents an hour.

Q. Such as that referred to in General Counsel Exhibit 13? A. Yes, took place, and this additional wage increase if it had been put into effect at Darlington would have cost the mill an additional $120,000 a year over and above a $240,000 projected loss that lay in front of the mill had print cloth prices stayed where they were on September 6, and they have since declined.

[995] Q. Now finally, Mr. Milliken, Mr. Zimny asked you a number of questions with respect to the solution or resolution of the problem in regard to the Japanese imports and the placing of quotas on those imports. Did there come to you either in September or October, 1956, or at any time earlier that year any statement from any public body that in substance meant to you that the Japanese import situation was going to be any less and would have any less effect on Darlington thereafter than Darlington had been subjected to in the past? A. No Sir.

* * *

Recross Examination (By Mr. Dyer)

Q. Mr. Milliken, in regard to General Counsel Exhibit 13, you mentioned just Drayton Mills, actually the announcement was to have affected more than one mill was it not? A. Yes, that is correct.

Q. In fact it was to affect some fifteen or twenty mills? A. Yes Sir.

[996] Trial Examiner: The increase went into effect when, you say, in 15 or 20 mills of yours?

Mr. Updike: I move to strike out "of yours".

Trial Examiner: Yes, I think the witness has referred to mills in which he held an interest.

Mr. Updike: Or mills represented by Deering, Milliken and Company as selling agents either way.

Trial Examiner: All right, put it that way in the question, that is what I meant. The evidence indicates that even Darlington mill was not this witness', I was careless in my use of the language.

A. The answer, Mr. Examiner, is yes, and the date effective October 8th.

Trial Examiner: What was the number of mills?

Mr. Dyer: I said 15 or 20. Can you be more accurate?

A. Yes, I can.

Q. What was that number? A. Twenty-seven.

* * *

[997] Q. Thank you. Now I believe you just stated that some of your customers said they would not purchase 40-inch goods any longer, is that correct? A. Yes, that is correct.

Q. That does not mean that all of your customers were refusing to buy 40-inch goods, does it? A. No.

Q. That was just a portion of the customers? A. Yes, and indicated the trend.

Q. All right. Now actually were you not anticipating the trend when you first ordered the 50-inch looms? A. Yes, that was the first step in the anticipation of the trend, yes.

Q. And actually at the time you anticipated that, you also anticipated that the company would probably of neces-

sity have to buy more wide looms besides these, did you not? A. Yes.

* * *

[998] Q. But the correct loss for the fiscal year for 1956 would have amounted then to about $30,000, would it, from October? A. Well, around that, yes.

Q. Was one of your reasons for not putting that increase into [999] effect in Darlington the fact that there was a union representing the people at Darlington? A. No Sir, the reason we did not put it in was that Darlington was then losing money and we did not feel while we were losing money that we should increase the loss while notice had been sent out to the stockholders calling a meeting to discuss the matter of liquidation.

* * * *

Q. When you say that the factor of the union election caused the review but not the liquidation, you do not mean that the fact of the union election did not have some influence in the liquidation? A. I have repeatedly said that the promises made by the union to the workers at Darlington during the strike in my mind meant that we would encounter increased resistance to a program of production which was essential if the mill were to be competitive with other print cloth mills.

Mr. Zimny: You used the phrase "during the strike", you don't mean that? You mean during the election?

A. Yes, the election campaign.

Q. (By Mr. Dyer) Mr. Milliken, when you said there was a general wage increase of ten cents in October, actually [1000] everybody followed that pattern, did they?

Mr. Updike: If you know.

Q. (By Mr. Dyer) Do you know of mills that did not follow the increase? A. I cannot think of any now except Darlington.

* * *

Recross Examination (By Mr. Zimny)

* * *

Trial Examiner: What is the question?

Mr. Zimny: Let me repeat it. Mr. Milliken, were you under the impression that you were under a legal compulsion to put the ten cent increase into effect at Darlington plant? A. No.

* * *

[1001] *Redirect examination*

Q. (By Mr. Updike)

* * *

Q. Immediately prior to the stockholders meeting, let's say, within a day or two prior to the stockholders meeting of October 17, did you have an approximate idea of the position of the proxies which had come back through the mail? A. I called Mr. Oeland and I think it was a week prior to the stockholders meeting, and he told me that proxies representing seventy-two percent of the stock had then been received by him, made out in his name or my name as the nominee.

Q. Now was that approximately the situation during the rest of that week? A. Yes, that is correct.

* * *

Q. But in anticipation of that meeting did you prepare the Exhibit 11? A. I did.

Q. And will you tell the Examiner the circumstances under which you prepared it? [1002] A. I anticipated, Mr. Examiner, that because the meeting of the stockholders has been widely commented upon in the press, that following the meeting I would be accosted by newspaper reporters who would ask me to give them some comment on what had taken place at the meeting. I anticipated that they would write a story up as to what I told them, knowing that seventy-two percent of the stock was voting in favor of, going to vote in favor of the directors' recommendation I felt that I could have with me at that time a news release which would dwell in detail on the machinery that was in Darlington and which would be offered for sale, that it would be possible to get some free advertising out of the news story that carried it. Unfortunately we got very little.

* * *

Q. Now I am not clear as to the significance of your answer to Mr. Dyer's Question about the relationship of the election to the directors' deliberations on the 12th of September, and I would like to be precise about that. You adverted in your answer to Mr. Dyer to your testimony several times repeated, that the election results indicated to you that the minority resistance had become a majority, am I right so far? [1003] A. Yes, that is correct.

Q. Now will you tell the Examiner what effect that had on the holding of the meeting or on the liquidation, or both? A. That factor caused me to review all of the economic factors affecting Darlington, it caused me to call the directors in New York and Connecticut and review them over the telephone in some detail, it caused them to agree with me that it was essential to call at the earliest possible time a

meeting of the full board of directors of Darlington Manufacturing Company to review all of the economic factors affecting the company and the prospects of profitable operation in the future.

Q. And you stated now the relationship to the holding of the meeting, is that correct? A. I don't understand that?

Q. You stated all in relationship to the holding of the meeting? A. Yes, that is right.

Q. That is all.

Recross examination (By Mr. Dyer)

Q. Now Mr. Milliken, actually, you talked about proxies if a person who submitted a proxy showed up that would in effect cancel out the proxy, now as far as the holdings of Deering Milliken is concerned, you were the person designated as proxy? [1004] A. Yes, I am Deering, Milliken's proxy.

Q. And there was no one else that could show up and cancel out that proxy, was there? A. That is correct.

Q. Also, at the time of the board of directors meeting on September 12, the board of directors unanimously voted to go along with the liquidation? A. To recommend it.

Q. At that time you knew what the holdings of the other members of the Board of directors were, did you not? A. Yes, sir.

Q. And at that time were you assured that the recommendation or recommendation for dissolution would be passed? A. I believed that unless other information was developed between the time of the directors meeting and the stockholders meeting they would vote their stock the same way they had voted in the directors meeting.

Q. And that in effect was a majority of the outstanding stock? A. I believe it was.

Q. I am not quite clear on Mr. Updike's last question when he said that had you told us the effect of the union election on the calling of the board of directors meeting, you limited yourself to just the calling of the meeting? A. Could I have that again?

Q. Yes, let me state it again. I just want to be clear from [1005] what the question and answer were. You named the number of factors that because of the union election you called the directors here and there, now you were limiting yourself in response to Mr. Updike's final question to the effect of the union election in the calling of the meeting, is that right? A. Yes, and I testified that it did or was responsible for the calling of a meeting and the review of all economic factors just as if the mill had had a fire or tornado struck would have caused a reconsideration of all the economic factors affecting the future of Darlington.

Q. And the election of the union in and of itself was one of the largest economic factors? A. No Sir. The winning of an election by the union meant to me and as Mr. Poag said that it meant to him, that a minority of the resistance to work assignments changed, had become a majority, and that meant to me that we were not going to be able to proceed with our program of modernization and cutting of costs.

Q. Then that in and of itself was an economic factor? A. Yes, that was an economic factor.

Q. And it was one of the largest economic factors that went into it? A. It was one of the factors that went into the decision.

Q. One of the major factors? A. Well, no, I would not say one of the major, there was a $240,000 loss.

[1006] Q. That is all.

Trial Examiner: Would it be fair to state of the company's position that it regarded the organiza-

tion of the plant by the union as an economic threat or economic factor?

A. To the extent only that it meant to me and to the other directors that we could expect increased resistence to the cost cutting.

Q. Does the company now have any mill or other operations? A. The Darlington Manufacturing Company?

Q. Yes? A. No Sir.

Q. Was Darlington ever closed down temporarily? A. Not since my connection with it.

Q. Have you ever closed down a plant in which you had an interest? A. Yes sir. As one of the members of the board of directors, Mr. Buchanan?

Q. Yes? For how long? A. One of them that I have in mind was closed for a period of three months.

Q. Strike the last question, and I won't consider this further because I detect an impulse in myself to make comparisons which would raise problems. I object and sustain the objection. I believe you told us, you answered this question but I don't recall the answer. Were any improvements or any improvements to the Darlington plant made in August of 1956? [1007] A. The program that had been authorized in 1955 and 1956 was still in progress during August, it had not been completed.

Q. And is it a fact that it was continued until September 12? A. Yes, it is.

Q. Do you recall testifying concerning your conversation with Senator Mozingo? A. I do.

Q. After the stockholders meeting? A. I do.

Q. I believe you told us that you urged that no publicity be given to the differences between the company and the employees because you thought that the latter might be willing to cooperate with a purchaser and that it might all

work out with a new company? A. I think it was slightly different from that.

Q. Can you clarify that? A. Yes.

Q. Please do? A. He had stated in the stockholders meeting that he believed that there was a conflict between the employees and management and that the employees were correct, that management had been bad and that he was going to be forced to publicly state these facts and to further make a statement that labor-management strife had started in South Carolina at Darlington, and I tried to persuade him not to make those statements about [1008] labor-management strife at Darlington because I was fearful that that would act as a deterrent to another company coming in and buying the entirety of Darlington and operating it as a textile mill, or in the event that it was sold piecemeal it would act as a deterrent in making Darlington an attractive place for another industry to invest a large sum of money.

Q. Perhaps I am mistaken, I was under the impression that you also told us that the employees who resisted, or who had resisted, I think you used that word, might take it to heart and might be willing to cooperate so that the new company might work the situation out? A. I said that they might realize that cooperation in modernization and costs cutting was essential if a company were to survive, and if they would offer that cooperation to another company.

Q. Did you think that if the employees and the union cooperated with a new company that a new company could profitably resume and continue operations? A. I really had in mind and probability that the mill would be sold piecemeal and that this would be very important to another concern coming there in a different line of business. I did not feel after the review of Darlington's economic position that

it would be possible for somebody else to make a success of Darlington in its entirety but maybe that was a matter of personal pride.

* * *

[1009] *Redirect Examination*

Q. (By Mr. Updike) Mr. Milliken, not only is Darlington without a mill or a mill operation as I understood you to answer Mr. Buchanan's question, but is there any expectation of operations in Darlington in the future? A. As a textile mill by the Darlington Manufacturing Company?

Q. Yes. A. No Sir.

Q. And any expectation on the part of the present management [1010] of Darlington to operate in the future? A. There is no such intention.

Q. Of operating at Darlington? A. No Sir.

* * *

[1013] Trial Examiner: Is it stipulated that this was a South Carolina corporation chartered in 1883?

Mr. Dyer: Yes Sir, I was going to state that the Complaint states it is chartered and named as a South Carolina corporation, that is admitted.

* * *

Trial Examiner: It is agreed and stipulated that the company is a South Carolina corporation, and that it received its charter in 1883.

Mr. Dyer: Yes.

Mr. Zimny: Yes.

* * *

[1014] WILLARD A. GOODWIN, a witness for and in behalf of the Respondent, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

Q. Your address? A. 12 Grove Street, Machias, Maine.

Direct Examination:

Q. (By Mr. Price) Mr. Goodwin, on September 6th of last year when the directors of Darlington Manufacturing Company held their meeting in Spartanburg or the 12th of September, and later on, on the 17th when the stockholders meeting was held, what position if any did you hold with the Darlington Manufacturing Company? A. Production superintendent.

Q. You were in that position when the union campaigned to be declared the bargaining agent was commenced? A. I was.

* * *

[1017] Q. Did Mr. Oeland return from Spartanburg that very afternoon? A. He did.

Q. What if anything did he do after he got back? A. He called us all in, all the overseers and myself into his office and reviewed what went on at the directors meeting. After that he asked us to go out in the plant and to convey this information to the employees that the recommendation had been made by the directors to consider liquidation, he felt that that was the better way of doing it in preference to any sort of notices.

Q. Well, did the overseers and all of you go out in the mill [1018] and notify the people what had been done in Spartanburg? A. We did.

Q. Mr. Goodwin, after you had been there a reasonable time, tell us what if anything you observed about a core of resistance to Mr. Oeland's instructions in the work and the modernization? A. After having been there for some time, there was very definitely a certain group which resisted the changes which were necessary if we were going to realize the benefits of the modernization program which were going on at the time I went there.

Q. Well, will you give some illustration along what you mean by resistance? A. One of the more important ones to me was the situation that we had in our weave room in regard to the excessive number of crooked ends in the salvages of the warps. It was one of the most important factors of why we had such a difficult time getting proper efficiency and a good work assignment on the part of our weavers. We worked very diligently at this and got them corrected to a point where the looms in my opinion ran much better. However, after a short period of time, in not giving that a daily look into, they resorted back to their original condition, and we went through that cycle of trying to get the job done and then it being unchecked again and going right back and doing it over again.

[1019] Q. Well now, were there other similar incidents like that? A. Yes, there were.

Q. Were you present in Mr. Oeland's office on the 7th of November at a conference between the union officials and members and Mr. Oeland and Mr. Poag and myself? A. I was.

Q. Were you present? A. I was.

Q. Will you tell us what if anything Mr. Gossett said in reference to the information that he wanted about the rates of pay during that conference? A. As I recall the conversation with regard to the wage rates, and Mr.

Gossett's requesting a copy and being asked why he needed the copy, he replied and said that he would like to have them in order to, as they approached another concern who would be interested in the purchase of the plant in its entirety, so that he could be sure that whoever came into the plant would pay the rates of pay comparable to the ones that we were now paying.

Q. Mr. Goodwin, during the course of this hearing, the witness L. W. Cook testified that on the 11th and 12th of September, I believe, that on the 12th of September, 1956, that he had a conversation with you in the mill, did you have such a conversation? A. I did.

[1020] Q. He stated in substance that you there said it was a mistake that they "hired you in the first place", and further reference to that, he said that you said "Well, when you get all of these people on your conscience and your pocketbooks are flat, I hope you are satisfied", did you say that? A. I did.

Q. Why did you say that? A. At that time, that was probably within less than one hour after coming out of Mr. Oeland's office and I think that like all of us like I was particularly disturbed at what I heard, and I recollect quite in anger I suspect that when I went up to see Mr. Cook, that I made those statements and made them in a certain amount of anger or frustration about the whole situation.

Q. Well, if liquidation went through you were going to lose your job too? A. Yes.

Q. And you did say those things to him? A. I did.

Q. Now another witness for the Board, Mrs. Elizabeth Johnson, said that she had a talk with you, I believe she said it was, I don't believe she fixed a date but do you remember having a conversation with her? A. I do.

Q. Was that before or after the directors meeting? [1021] A. That was before.

Q. Now she says that you said "I see you have still got that button on", and she said, "Yes, I am not a liar or a cheat or a hypocrite", and he said "I admire your courage", and "He asked me if I had seen the company nurse, and I told him that I had not, and he said he had a new nurse and said why did I not go down and see her and see if I could not get some more medical attention, and our superintendent, he told us people that if we voted in the union in the plant that they would shut it down and that they would start shutting it down in about thirty days, and I asked him, I said, if I wanted a recommendation how do I stand to you, and he said if I did not go to one of the Milliken mills I had a good recommendation, but he would have to tell them that I voted for the union, and I said, you don't have any record that I voted for the union", did you have a conversation like that with her? A. I did.

Q. Just what did you say, first did you tell her that the plant would be closed down if you had the union? A. No, I did not.

Q. Well, what was it generally that you said to her in that conversation? A. For the most part the conversation with regard to the first part about the union button and what she replied and in [1022] regard to visiting the nurse because we were quite concerned over something that had happened prior to that, that in essence I did say. I did not mention at this time the closing of the mill, nor anything about the machinery being sold, and concerning the recommendation, I said that I felt obligated if anyone called and asked for a recommendation that I would give her one as so stated but I would have to say that she voted for the union by her own admission.

Q. Now did you say anything to her about Mr. Roger Milliken would close the plant if the union came in? A. No.

* * * *

Q. There is another one in this hearing, Mr. Andrews, page No. 77 of the record.

Trial Examiner: Who is that?

Mr. Price: Corbin Andrews. Now he says that on the 12th after the stockholders meeting that you came to him and among other things said, "He came to me and said—and I had a union badge on, and he asked me had it done me any good, and I said I don't know but I hope so", and he said, "Well, I forgot exactly what he said", he said, "He asked me did I have another job and I told him no, and I did not because I had not and he said, well, you had better start hunting one because the mill is going to shut down, we have already sold the machines", did you make any statement like that? [1023] A. I made the statement to Mr. Andrews which was the morning after the directors meeting, and I believe he worked on the third shift, I stopped while Mr. Andrews was doffing his frame and talked with him and at that time I asked him if he did have another job, because in as much as he had already heard that the board of directors had recommended liquidation, and in my feeling I should think he ought to start looking for one and I made no mention certainly that the machinery had been sold.

Q. You did not say anything to him about the machinery being sold? A. No.

Q. Did you say anything to him or any of these other witnesses to the effect that Mr. Roger Milliken would close the plant down if a union came in? A. I have never made such a statement.

* * *

Cross Examination

Q. (By Mr. Dyer) When did you come with Darlington Manufacturing Company? A. About the first of September 1955.

[1028] *Redirect Examination*

Q. (By Mr. Price) Mr. Goodwin, I neglected to ask you a minute ago, something was said about after the directors meeting they considered slowing down and cutting down of work there in the mill, was that right or wrong? A. You mean after——

Q. After the directors meeting up until the time of the stockholders meeting? A. As production superintendent, Mr. Oeland gave me [1029] instructions to keep the mill running or keep the weave room running at full capacity until such time as the stockholders met and made their decision. The only place where we had some reduction possibly was due to the fact that we had I believe close to sixty section beams of warp yarn in our warehouse and it seemed advisable to use that inventory up which we proceeded to do.

Q. In Mr. Oeland's instructions to you and all the other overseers when he got back from Spartanburg, state whether or not his instructions were to hold things in a status quo? A. It was.

Q. And did you do that? A. I certainly did.

Q. Did you do that until the stockholders meeting? A. I did.

* * *

[1031] HUGH CAMPBELL, a witness for and in behalf of the Respondent, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. Your address? A. Worthville, N. C.

* * *

Direct Examination

Q. (By Mr. Poag)

* * *

[1032] Q. When were you employed by Darlington Manufacturing Company? A. I was employed in November 1955.

Q. In what capacity? A. Overseer of preparations.

* * *

[1033] Mr. Zimny: I object, that is clearly leading.

Q. (By Mr. Poag) Following this meeting with Mr. Oeland, what if anything did you and the other overseers do in regard to going out in the plant and informing the people of what had transpired? [1034] A. Well, as I recall that was about 4:30 in the afternoon, when Mr. Oeland had the meeting in the office, and me and the rest of the overseers went out in the plant and informed the people on the second shift of what had transpired at the directors meeting at Spartanburg.

Q. Now do you know Nettie Whitley? A. Yes, I do.

Q. Did she work in your department? A. Yes.

Q. She testified here that a couple of days or a week before the election, that you and she had a conversation in which you asked her how she felt about it, "and I did not say anything at first, and that is when he told me about that he felt like I was for it, and I told him yes", "And then

another time he come around", did you have that conversation with her? A. Yes, I did.

Q. Then on the second occasion, she said that you said, "Well, that is he just told me that they felt like I was for it because they would not hire my husband", was anything said about voting at that time, she was asked, and her answer was "I just don't recall", did you have that conversation with her? A. Yes, I did have a conversation and talked to her about her husband, and I was very much interested and I wanted her to do what I thought was the right thing.

[1035] Trial Examiner: You mean by her husband?

A. No, by all of this union vote, I wanted her to do what I thought was the best thing for the people, and I did ask her how she felt about the union and I had reports that she was, well, I knew that she was for it.

Q. (By Mr. Poag) Did she seek your advice in any respect? A. Sir?

Q. Did she seek your advice in any respect in regard to the union matter? A. Yes, she asked what I thought about it.

Q. And in response to inquiries which she made of you, you volunteered your opinion and feeling about the matter? A. That is correct.

* * *

[1044] DAVID K. SHIRLEY, a witness for and in behalf of the Respondent, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Direct examination

Q. (By Mr. Price)

* * *

[1045] Q. What position if any did you hold at Darlington Manufacturing Company? A. Overseer of spinning.

Q. When did you come to Darlington to work in that capacity? A. May 28, 1956.

* * *

[1050] Q. Lets go over here to Elizabeth Johnson, was she one of your employees? A. Yes Sir.

Q. Did you have one or more conversations with her? Do you remember having a conversation with her? A. Yes Sir.

Q. Will you tell your recollection of it just as briefly as you can what you remember of it? A. I remember that she came up or I might have sent for her, I don't know, she came in the office one morning and we got into this conversation, I don't know just now how the conversation began but I did talk with her concerning the union and I asked her how she felt towards the union and she said she did not know anything about the union, and she did not intend to have anything to do with it, and——

Q. Go ahead? A. I don't recall all of the conversation but she just assured me that she was not going to have anything to do with the union.

Q. She told you that, well, in that conversation did you say anything to this lady to the effect that Milliken would close the plant down? A. No Sir.

Q. What about Marion B. Gainey, did you know her? A. Yes Sir.

[1051] Q. Do you recall a conversation you had with her at any time? A. Well, I had several conversations with Marion Gainey and I can't recall everything that was said but she did ask me about the union and I talked with her concerning the union, and she assured me, it seems I

had known her for some time, I asked her how she felt about it and she said she did not know anything about it and was not going to have anything to do with it, and that was about the line of conversation that I carried on with Mrs. Gainey in all conversations, something along that line.

Q. In that conversation with her or at any other time did you ever tell her that if the union came in the plant, Mr. Robert Milliken would close it down. A. No Sir.

Q. Had you ever talked to Mr. Milliken at all about it? A. No Sir.

Q. Were you personally acquainted with him? A. No Sir.

* * *

[1052] Q. Did you make a statement to the effect that you knew what kind of a man Mr. Milliken is and that he figured that a man that would vote for the union won't do a day's work? A. This statement here is not Mrs. Nora King's, that is referring to another one.

Q. Was it Mrs. Rutherford? A. No, I believe the one you have there is Mary Baker, is it, or it might have been—but it was not Mrs. King.

* * *

[1054] Q. Did you know Mrs. Jessie Harrelson? A. Yes Sir.

Q. Did you have any conversation with her? A. Yes Sir.

Q. Do you recall commencing with the first one you had with her? A. As I remember, when I went to Darlington they had a surplus of help, you might say fifty percent spare help and some of the people immediately began to complain to me about not getting enough work, I

will put it like this, maybe you can understand it better. We had fifty-four jobs in the spinning, we had 37 spare hands which meant some of them was resting more than they wanted to, and we drawed up a policy there where we figured would be fair to everyone using the length of time service. Now this is when we were going to have to lay off some, we did lay off thirteen, transferred two to other departments which left about 17 spare or four per shift. It happened that Mrs. Harrelson had been working there some four or five weeks, I believe, and that being one thing that we looked into is [1055] their continued service. It fell her lot to be laid off along with her ability to run the job, but when she was laid off I explained to her after she told me that she had, I believe, five children, how bad she needed work, I explained to her the very first opportunity I got that I would see that she would be the first that I brought back, and in a couple of weeks or so it happened that I was able to take on and I take Mrs. Harrelson, so, and then——

Q. Well, go from there to the conversation that she testified the other day? A. We hired her and after we had gone through the preliminary of hiring her and she had a job and was told to come in and what shift to report on, I asked her and told her what I had talked to her about had nothing whatsoever to do with the union or her way of thinking concerning the union, but I would like to know how she felt, and she said "Well, I tell you", she said, "My daddy had a, had run a second hand job there for a number of years, and her uncle had run the overseer's job, and I have saw them come home so upset trying to run a job until they could not eat or could not rest", and I said, "Well, I gather from that you, I will get your full cooperation and that you will help run the job", and she assured me that she would, and would not have anything to do with the union, not that I told her

not to but she told me that she would not have anything to do with it, says "I know nothing about it and don't care [1056] about it", that is what she told me in that conversation, as well as I remember.

* * *

Q. Well, in that conversation or any conversation that you had with her did you ever tell her that you knew that if the union came in Roger Milliken would close the plant? A. I did not.

* * *

[1061] Q. (by Mr. Price). Did you tell her that Mr. Milliken had spent a pile of money on the mill and if the union came in there he would close it down? A. No Sir.

Q. Did you ever make that remark to any employee? A. No.

* * *

[1064] Mr. Poag: Mr. Examiner, counsel for the respective parties have agreed on a stipulation which I wish to read into the record, and I quote:

It is stipulated by agreement between counsel for the Respondent, General Counsel and counsel for the Charging Union, as follows:

If each of the remaining individuals heretofore stipulated as constituting the supervisory personnel of Darlington Manufacturing Company, were presented as witnesses for the purpose of giving oral testimony, they, and any of them,

(1) would testify that J. M. Oeland returned from the directors meeting held at Spartanburg, S. C., on September 12, 1956, called them together in a meeting and acquainted them with the fact that the board of directors of Darlington Manufacturing

Company had unanimously voted to recommend to the stockholders, at a meeting to be called on October 17, 1956, that Darlington Manufacturing Company go into liquidation for the reasons enumerated by Roger Milliken, and that he had been instructed to maintain the status quo in the operation of the plant during the interim between September 12 and October 17, 1956;

(2) That immediately following this meeting the overseers went out over the plant and apprised the employees of the [1065] decision reached by the board of directors;

* * *

[1070] Trial Examiner: On the record. The record will show that the two first items of the proposed stipulation are in fact stipulated to.

* * *

[1071] Q. Now reference has been made to a meeting that was called by Mr. Goodwin on September 12, 1956, at your request of the supervisory staff of Darlington, do you recall textimony to that effect? A. Yes.

Q. Now will you please state, Sir, just the substance of what you said to that force with respect to what Mr. Milliken had instructed previously thereto following the directors meeting that has been testified to? A. I read the notice that was going out in the local paper regarding the action of the board of directors requesting a stockholders meeting to consider liquidation. I also gave them as near as I could the words of Mr. Milliken and others regarding the reason for liquidation.

Q. Now what was said by you at that time with respect to [1072] keeping the mill in operation? A. I told them

my instructions were to keep everything status quo which I understood to mean that we would keep the mill in operation and in such a way that should the stockholders not approve the action of the directors we would go right straight ahead on full operation.

Q. Now during the period between September 12 and October 17, to what extent did the weave room at Darlington operate, Sir? A. It operated on a 48-hour shift each week.

Q. And the three shifts aggregated 144 hours per week? A. Yes.

Q. Now in relation to that, or withdraw that. Was that maximum operation of the weave room in the history of Darlington? A. Yes.

Q. In relation to that can you state approximately the extent of operations as relate to departments? A. As has been brought out in the testimony, we had on hand certain warp yarn that we used during this period.

Q. That was in anticipation of warping the 50-inch wide looms? A. Yes, that is right.

* * *

[1073] Q. All right Sir, now except for the absence of need for product of a particular division, what can you say with respect to the operations of Darlington Mill in its entirety during this September 12 to October 17 period? A. It operated on a full schedule.

Q. And were all employees whether or not to have belonged to the union or not employed full time consistent with what you have just stated about the operation of the mill? A. Yes.

Q. Now Mr. Oeland, there is some testimony here with respect to some petition or petitions that were circulated in the plant. First of all, was there any petition that was initiated by you or with your knowledge? A. No.

Q. Did you offer any sponsorship direct or indirect? A. No.

* * *

[1082] Did Mr. Campbell say to you after asking you how the situation looked, and you answered that it "looked very dim", did you say that if the union was out the mill would run, but if it was in the mill would close? A. No Sir.

Q. Nothing like that at all? A. No.

Q. Now finally, Mr. Oeland, did you have an account of the number of stockholders, of who were present at the meeting of October 17? A. I think I remember, I would like to state that I have given it to the counsel, General Counsel, a list of those that were there.

Q. Would you just state the number in the record? A. As I remember it was a little over 150 shareholders represented there.

Mr. Zimny: Was that shareholders or proxies?

A. Proxies and in person.

Q. (By Mr. Updike) And can you remember how many voted for and how many voted against? [1083] A. There were four present that represented four proxies that voted against the recommendation for liquidation.

Q. Was one of them Senator Mozingo? A. Yes.

Q. And who were the others? A. Mr. LeRoy Want, attorney here in town, and Mr. Tom Buchanan, or Mayor Tom Buchanan and Mr. Ted Coggshall.

Q. And was Mr. Coggshall a Darlington man? A. Yes.

Q. So that the four that you mentioned were all Darlington people, is that right? A. Yes.

Q. I mean from the Town of Darlington? A. Yes.

Q. And the remainder present in person or by proxy, voted in favor of the liquidation? A. Yes.

* * *

Q. That is all. You may examine. I do have one further question. Did Mr. Milliken before or after the directors meeting state to you in substance that if the union won the election or came into the plant that he would close that plant down? A. No Sir.

* * *

[1085] THOMAS MARION BAKER, a witness for and in behalf of the Respondent, upon being first duly sworn, was examined and testified as follows:

[1086] Trial Examiner:

* * *

Q. Your address? A. 208 Catherine Street, Union, S. C.

* * *

Q. Did you tell at any time during or from the time the union started the campaign until the very last when the mill was closed, did you tell any of these witnesses who have been in the court room that Roger Milliken had said that he would close the mill if the union came in or that he had any intention or would close the mill if the union came in? Did you ever make that statement to anybody? A. No Sir, I did not.

* * *

[1087] *Cross Examination*

Q. (By Mr. Dyer) Mr. Baker, are you employed at present? A. Yes.

Q. Where? A. Monarch Mills, Union, S. C.

* * *

[1088] WILLIAM A. HAMMOND, A witness for and in behalf of the Respondent, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

[1089] Q. Did you at any time prior to the sale of the mill say to any witness that Roger Milliken had said to you that if the union came in he would close the plant? A. I did not.

Q. Did you tell anyone, any of these witnesses, and particularly Mr. J. B. Floyd, that if the union came in Roger Milliken would close the plant? A. I did not.

Q. Did you ever quote Roger Milliken at all to any employee along that line? A. No sir.

Cross Examination

Q. (By Mr. Dyer) Mr. Hammond, where are you employed at present? A. Deering, Milliken Service Corporation, Union, S. C.

Q. When did you get that job? A. December 12, 1956.

Q. Were you employed prior to that at any other location? A. I was.

Q. Where is that? A. Morgan Mills, Springfield Plant, Lauinburg, N. C.

[1090] Q. Did you apply for this job at Deering Millikin Service Corporation? A. I did.

Q. When did you do so? A. Along about the first week in December I called Mr. Ray Toher and asked if the job was available.

Q. Somebody told you that the job was available? A. Yes.

Q. Who did? A. Mr. Toher called me and asked if I was interested to contact—him.

* * *

Trial Examiner: Who is it that you spoke to?

A. To Mr. Ray Toher.

Mr. Price: Have you got a family?

A. Yes. Four including myself.

Q. You are glad to get a job, were you? A. I sure was.

* * *

[1095] FRANK KINSEY, a witness for and in behalf of the Respondent, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Direct Examination

Q. (By Mr. Price) Mr. Kinsey, what position did you hold at Darlington Manufacturing Company last year to the time the mill was sold? A. Second hand.

Q. How long had you been working as second hand at that mill? A. Sixteen years.

Q. Mr. Kinsey, during the union campaign and any time up until the time of the sale, did you tell any of these witnesses who have been here or any employees out there that Mr. Roger Milliken had told you that if the union came in he would close the plant? Did you make any such remark? [1096] A. I did not.

Q. Did you know Mr. Milliken? A. I did not only seeing him come through the mill, that is all.

Q. Do you know whether or not you ever had a conversation with him? A. I never spoke to him in my life.

Q. And you made no such statement to any witnesses, or any of the people out there? A. No.

Q. You are not working anywhere, are you? A. Yes. Just about on relief.

Q. Well, we are satisfied it will come out all right for you. Any questions?

Mr. Dyer: Yes.

Cross Examination

* * *

[1097] Q. Now do you remember giving a statement to a newspaper reporter wherein you said, "The company officials told me and forty other employees if we would oppose the union in its effort to organize the workers, that we would be taken care of, if we fought the union, we lost the election and now we are losing our jobs"? A. I got that reporter back and straightened it out. I got that back and straightened it out. I did not.

Q. What did you tell this reporter? A. I did not tell him that.

What did you tell him? A. I told him we were under the impression that the mill was going to run on, that the mill was not going to close, I did tell him that.

Q. Do you remember what you did tell him? A. Remember what?

Q. What did you tell the reporter? A. No, I don't remember.

Trial Examiner: Did you tell him that you were under the impression that the mill would not close?

A. I was under the impression that the mill would not close.

Q. (By Mr. Dyer) Did you see this statement in a newspaper? A. What is that?

Q. This statement that I just read to you, did you see that? [1098] A. Yes, that is the reason I got him back and straightened it out.

Q. What did you straighten out? A. I don't remember now what it was.

Trial Examiner: Do you mean that you straightened out this article? A. Yes.

Q. I think the question is, what did you say, is that the question?

Mr. Dyer: Yes.

Trial Examiner: What did you say to the newspaper reporter when he came after this article appeared?

A. I don't remember, there was a mix-up in there and I don't remember just what it was.

Q. (By Mr. Dyer) Do you remember saying to the newspaper reporter that you did not think the action was right, you did not believe it was being fair to those of you who attempted to avoid the union? A. I did not involve the company in any way, I was speaking only for myself. The company did not tell me anything about that, I made that remark myself.

Q. And you said you did not think that the company was being fair to those of you who attempted to avoid the unionization, is that right? A. I don't know exactly how that was, no, I don't remember that.

* * *

[1099] *Redirect Examination*

Q. (By Mr. Price) Mr. Kinsey, I will ask you this. If the things that you said throughout this campaign were not just your individual opinion? A. What?

Q. Was it or not your individual opinion, you were not told by Mr. Oeland or anybody? A. Oh no.

* * *

DEWEY COX, a witness for and in behalf of the Respondent, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. Your address? A. 639 Pearl Street, Darlington, S. C.

Direct Examination

Q. (By Mr. Price) Mr. Cox, what was your position at Darlington Manufacturing Company during this election and until the plant closed? A. Second hand in the weave room.

Q. Where are you working now? [1100] A. I work for Morgan Mills at Springfield, N. C.

Q. In the same work? A. Yes, the same work I was doing here.

Q. Mr. Cox, during this entire time in this controversy did you or not at any time say to any of these witnesses that have been over here by the Board that Roger Milliken had told you that if the union came in he was going to close the plant? A. No Sir, I never spoke to Mr. Milliken in my life.

* * *

[1101] Trial Examiner: As nearly as you can recall, what did you say, did you say something to O'Neal about the plant closing?

[1102] A. I dont't remember whether I did or not. I had 38 people that I was working and I talked with all of them.

* * *

[1110] ALBERT E. HUTCHINSON, a witness for and in behalf of the Respondent, upon being first duly sworn, was examined and testified as follows:

* * *

Direct Examination

Q. (By Mr. Price) Do you live here in Darlington now? A. Yes.

Q. Where are you working? A. No where.

Q. You have not got a job yet? A. No.

Q. What position did you hold at Darlington Manufacturing Company during this union campaign? A. Second hand.

Q. How long had you had that job? A. About fifteen years.

Q. Had that particular job fifteen years? A. Yes.

Q. Before that had you worked? [1111] A. As a loom fixer.

Q. How long as that? A. And as a weaver, about 17 years I think, no, about 15 years.

Q. In other words you have been there altogether around 30 years? A. Yes.

Q. What family do you have? A. Just myself and my wife and one boy now. I have four kids besides.

Q. Did you or not receive invitations to attend the union meeting at the famous Mineral Springs? A. A good many of them to start with, the last part I did not receive any.

Q. Now how did you get those invitations? A. At 780 Pearl Street.

Q. How did they come? A. They mailed them to me in an envelope.

* * *

[1112] Q. Did you you go to any of the meetings? A. The first meeting May 6th.

Q. Only one meeting and that was the first one? A. Yes.

Q. Do you remember who was speaking on that date? A. No, I don't know his name. There was a kind of an old gentleman, grey headed. I understood the follow to be a fellow Gossett.

Q. Is that this fellow here? A. Yes, I think that is him.

Q. Do you remember what he was saying at the time in the speech when you were there? A. I was there only about fifteen minutes and one of them said that Mr. Milliken could not shut the mill down, the government would not let him, and I left. I did not want to hear any more.

* * *

[1113] Q. Did you tell any of those witnesses that Roger Milliken had told you and said to you that if the union won the election, that he would close down that mill? A. No Sir.

Q. Did you tell any of them that, yourself, that you knew that it would be closed down? A. No.

* * *

[115] SHIPLEY PASSMORE, a witness for and in behalf of the Respondent, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Q. Your address? A. 403 Norwood Street, Hartsville, S. C.

Direct Examination

Q. (By Mr. Price) Mr. Passmore, where are you working now? [1116] A. Springfield, Morgan Mills.

Q. What work did you have here at Darlington during this union campaign? A. I was second hand on the third shift, spinning department.

Q. When did you go to work here at the mill? A. About the 4th of June, I believe, it was 1956.

* * *

Q. I will ask you if at any time you said to any of these witnesses for the government that Roger Milliken had said to you or told you that if the union succeeded in the election that he would close down this plant? A. No.

Q. Did you make that statement to anyone? A. No.

* * *

[1117] TROY J. TOBIAS, a witness for and in behalf of the Respondent, upon being first duly sworn, was examined and testified as follows:

Trial Examiner:

* * *

Direct Examination

Q. (By Mr. Price) Mr. Tobias, what position did you have at Darlington Mills last year? A. Second hand, third shift.

Q. How long had you been there? A. Three or four years, I had been there altogether about 24 years.

Q. You had worked as an employee for a good many years and then made a second hand? A. Yes.

Q. During this entire time from the beginning until the mill was sold, did you ever say to any employee or any of [1118] these witnesses that have been on the stand that Roger Milliken said to you or told you that if the union won the election he would close the plant? A. No Sir.

Q. Did you ever tell them that you knew that Roger Milliken would close the plant? A. No Sir.

Q. In particular did you tell a witness by the name of Mrs. Margaret Truett, that you knew that Milliken would shut the mill down if the union came in? A. No, Sir, I did not.

* * *

[1122] Giles C. Kinsaul, a witness for and in behalf of Respondent, upon being first duly sworn, was examined and tesitfied as follows:

Trial Examiner:

* * *

Q. Your address? A. Route 2, Darlington, S. C.

Direct Examination

Q. (By Mr. Price) Mr. Kinsaul, what position were you holding at the time the mill stockholders meeting and

the directors meeting in September and October were held? A. Second hand in the spinning room.

Q. How long had you been there? A. I had been on that as second hand for about nine months.

Q. Had you worked otherwise in the plant? A. Yes, about 16 years.

* * *

Q. I want to ask you this question, if at any time from the time the union started the campaign until the mill was sold [1123] did you ever say to any of the witnesses who have been on the stand or any employees of the mill that Roger Milliken had told you or said to you that if the union won the election he was going to close the plant, did you? A. No Sir. I never have spoke to Mr. Milliken.

Q. You never have spoke to him? A. No.

Q. Did you ever tell any of them that you knew that the plant would be closed by Mr. Milliken? A. No, I could not have known because I never talked to him.

Q. You did not make that remark to anyone? A. No.

* * *

[1205] BEFORE THE

NATIONAL LABOR RELATIONS BOARD

ELEVENTH REGION

In the Matter of:	
DARLINGTON MANUFACTURING COMPANY ROGER MILLIKEN DEERING-MILLIKEN AND COMPANY, INC. —and— TEXTILE WORKERS UNION OF AMERICA, A. F. L.-C. I. O.	Case No. 11-CA-1071

Post Office Building,
Charleston, South Carolina,
Tuesday, September 30, 1958.

The above-entitled matter came on for further hearing, pursuant to adjournment, at 11:00 o'clock a. m.

BEFORE:

LLOYD BUCHANAN, Hearing Officer.

APPEARANCES:

JOHN M. DYER,	General Counsel, National Labor Relations Board, 1831 Nissen Building, Winston-Salem, North Carolina.
NATHANIEL R. JANES,	90 University Place, New York, New York;
—and—	
BENJAMIN WYLE,	99 University Place, New York, New York, appearing for Charging Party.

[1206] APPEARANCES (Cont'd):

STUART N. UPDIKE, —and— JOHN R. SCHOEMER, JR.,	Townely, Updike, Carter & Rogers, 220 East 42nd Street, New York 17, New York, appearing for the Respondent; Deering, Milliken & Company, Inc., and Roger Milliken;
J. D. POAG, —and— JOHN R. SCHOEMER, JR.,	Price & Poag, Lawyers Building, Greenville, South Carolina, appearing on behalf of Respondent, Darlington Manufacturing Co.

* * *

[1208] PROCEEDINGS

Hearing Officer Buchanan: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Darlington Manufacturing Company and Textile Workers Union of America, AFL-CIO, Case No. 11-CA-1071.

The hearing is being held on remand pursuant to the Order of the Board remanding proceeding to Regional Director for further hearing. That Order is dated December 16, 1957, and is reported at 119 NLRB No. 16.

Will Counsel and other representatives for the parties please state their appearances for the record.

Mr. Dyer: Appearing as Counsel for the General Counsel, John M. Dyer, 1831 Nissen Building, Winston-Salem, North Carolina.

Mr. Janes: Appearing for the Charging Party, Benjamin Weyl, 99 University Place, Attorney for the Textile Workers Union of America, by Nathaniel H. Janes, as Counsel.

Mr. Updike: Appearances on behalf of Respondent, Deering, Milliken, Co., Inc., and Roger Milliken, Townley, Updike, Carter and Rogers, 220 East 42nd Street, New York 17, New York, by Stuart N. Updike and John R. Schoemer, Jr.

Appearances on behalf of the Respondent, Darlington Manufacturing Company, Price & Poag, Lawyers Building, Greenville, South Carolina, By J. D. Poag.

[1209] And John R. Schoemer, appearing also on behalf of Price & Poag.

Mr. Examiner, in connection with these appearances, I would like to make on the record a statement that I made to you prior to going on the record just now.

As we view the Board's remand Order in this case, it is not a case against Darlington Manufacturing Company,

but rather that the case against Darlington Manufacturing Company was heard by you, was decided by you, as reported in your Intermediate Report; and that the decision of the Board to remand this for further hearing goes not to Darlington as such, but rather to the new added Respondents, which were referred to in the offer of proof by Counsel for the Charging Party, namely, Deering-Milliken Company, and Roger Milliken.

This view of the status of Darlington as something of an onlooker at these proceedings is a view, I believe, shared to a large extent by both Mr. Dyer and Mr. Janes. I don't want to put them in a position of sharing in it completely, because I am not sure that they do.

In order to avoid the necessity, therefore, of keeping Mr. Poag here day in and day out for what looks to be a long and protracted trial, I have proposed that Mr. Schoemer, my partner, appear of record as Counsel for Price & Poag in order that Darlington will have representation here without bothering Mr. Poag to come back each day.

[1210] I have done this on the understanding with Mr. Dyer and with Mr. Janes that they do not draw any inference, and they will not ask that any inference be drawn, from the presence of my firm here as token Counsel for Darlington.

That itself is some evidence of a blurring of the corporate issues which are the core issue before you to try.

I have ascertained, I hope, from you, sir, that you yourself in view of the position taken by Mr. Dyer and Mr. Janes will not draw any such inference. And I would like to have this clear on the record so that if there is any misunderstanding about it, it can be met and dealt with now rather than having any problem about it later on.

I also have one further thing that I would like to put on the record in a moment. But perhaps Mr. Dyer or Mr. Janes would like to speak to my last statement.

Mr. Dyer: As Counsel for the General Counsel, General Counsel will not attempt to raise any inference or ask that any inference be drawn on the appearance of Mr. Schoemer on behalf of Darlington.

Mr. Janes: Speaking on behalf of the Charging Party, I would subscribe to what Mr. Dyer has just said about drawing of the inferences. I don't want to go into the other statements that Mr. Updike made at this time, because I don't think it is necessary. But I do want to make it very clear that I do take exception to a number of statements [1211] made there as to the understanding or the interpretation of the Board's Order.

And my agreement not to go into the inference as to the representation by Counsel should not be also an inference held against me that I subscribe to what Mr. Updike has said with reference to the interpretation of the Board's Order.

Mr. Updike: Mr. Examiner, I certainly didn't ask Mr. Janes to subscribe to that.

Now, may I change to one other topic?

I would like to have it appear on the record that since the Board's Order of decision taken, 1957, and since the issuance of the amended complaint naming as additional respondents Deering, Milliken and Company, and Roger Milliken, Mr. Poag's firm and mine have made available to Board's Counsel for his inspection the 1955, 1956 and 1957 records of the Darlington Manufacturing Company together with the records of Deering-Milliken Service Corporation, Deering-Milliken Research Corporation pertaining to Darlington. These records numbered and total in

excess of ten-thousand sheets, of which about 2600 was selected by Mr. Dyer for his further examination and study.

And, if he desired to do so, for copying.

To a large extent, the case as Mr. Dyer will present it to you is a case made from documents so obtained by the Board.

[1212] Mr. Dyer: I might say, Mr. Examiner, this arrangement by which I was allowed to view these records and to obtain parts of them was made with the kind cooperation of Counsel for both the Union and for the various Respondents in order to avoid the necessity for a protracted subpoena proceedings.

* * *

[1232] Hearing Officer: I think the question is this, Gentlemen.

If "A" and "B" occupy a single employer status, the question is whether service on "A" or inclusion of "A" in a proceeding covers "B" so that "B" will be bound by any determination.

I think the definition of single employer or just the word "single" suggests the answer. And entirely with respect to this practical aspect distinguished from the matter of form, I think we have jurisdiction of any party which with the Respondent Darlington Manufacturing Company occupies a single employer status.

Mr. Updike: I don't share that concept, sir. Because [1233] as it seems to me, we are going to be confronted, perhaps in the course of this case, with a concern that is called the "Monarch Manufacturing Company".

Monarch Manufacturing Company has got five-or six-hundred stockholders. The stockholders are widely spread across the country. Darlington itself has, as I recall, two or three hundred stockholders. They are also widely spread.

It seems that to start out on the assumption that if the ultimate finding is that "A" and "B" are the same, that "B" ought to have some notice of the fact that he is being charged with being the same as "A".

And Monarch is not named as a Respondent in this Complaint. There are only two additional respondents; Roger Milliken individually, and Deering-Milliken and Company. And I wish to make it clear on the record that we do not conceive that the Board is now asserting any jurisdiction with respect to any other concern or concerns than those which are named in this amended complaint.

Hearing Officer: That is another question. Or perhaps it is another facet of the same question.

* * *

[1235] Mr. Updike: In response to what Mr. Dyer said, if I understand his position to be that by some kind of mysterious ties, Monarch's rights are being adjudicated here, or any one of a number of different concerns, I wish to make it [1236] perfectly clear that I don't represent them, and they are unrepresented here.

Before the Board can take action, effective action, with respect to them, it is my view that they are entitled to notice as a matter of due process.

* * *

[1240] Hearing Officer: I don't want the last word gentlemen. And my statement of it undoubtedly will not be as good as that by Counsel. But perhaps I can state things more simply.

Are we limited here to the question of remedy?

Are we agreed on that?

Mr. Dyer: If you considered incidental to the remedy is the filing of the single employer status, yes, sir.

* * *

[1242] AFTERNOON SESSION

2:25 p.m.

Hearing Officer Buchanan: Is it correct to say, Gentlemen, that in the main there will be no issue concerning the evidence offered, the issue being the conclusions to be drawn from the evidence?

Mr. Dyer: I believe that is essentially correct, sir, because all of the evidence which General Counsel is going to produce has come from the records of Darlington and Deering-Milliken as mentioned by Mr. Updike this morning.

Mr. Updike: I do think Mr. Dyer that should be supplemented by reference to the research corporation and the service corporation?

Mr. Dyer: All right.

Sir, at this time I would like to call Mr. Minot Milliken, under Rule 43(b).

Whereupon,

MINOT K. MILLIKEN, called as a witness, having been first duly sworn, was examined and testified as follows:

Hearing Officer: State your full name.

The Witness: Minot K. Milliken.

Hearing Officer: And your address?

The Witness: 186 East 64th Street, New York City.

Mr. Updike: May I have on the record with respect to [1243] Rule 43 what in your view that rule encompasses?

Mr. Dyer: Rule 43(b) is one of the Federal Rules of Procedure with regard to calling adverse witnesses.

Mr. Updike: All right.

Direct Examination

Q. (By Mr. Dyer) Mr. Milliken, what is your position with Deering-Milliken and Company? A. I am a Vice President, the Treasurer and a Director.

Q. Vice President, Director and Treasurer in Milliken Company? A. Yes, sir.

Q. Now, Deering-Milliken and Company is located essentially in New York? That is the main office, is that right? A. Yes, sir.

Q. And where else does the company have offices? A. Are we talking now as of 1956, Mr. Dyer?

Q. Suppose you tell us both? A. The Los Angeles, California; Dallas, Texas; Chicago, Illinois; Cleveland, Ohio; St. Louis, Missouri; Atlanta, Georgia; Camden, New Jersey. I believe that is all.

My question was I am not sure whether the Camden Office was open prior to or subsequent to the autumn of 1956. But I think it was prior to.

Q. In addition to offices there, the company also does business through selling agents throughout the world in about [1244] 29 different countries; is that right? A. Well, there are products sold through some agents of the Deering-Milliken Export Corporation.

Q. I see. A. And of course there are additional products sold by Deering-Milliken Export Corporation to countries without agents?

Q. I see.

But Deering-Milliken itself has agents in other countries? A. No, sir, I don't believe it does.

Q. It does not? A. No.

Q. It is merely the export corporation which does? A. Yes, sir.

Q. Now, can you describe for us the set-up of Deering-Milliken and Company giving us the various departments which it has and how they are set-up; how the various subdivisions are set up? A. Well, let me start with the sales function of Deering-Milliken, if I may.

And if I get going into too much detail, please stop me, because I don't know what detail you are interested in, Mr. Dyer.

Basically there are two subdivisions of the selling forces in Deering-Milliken; one the greige goods sales and another the actual—actually is another subsidiary corporation; [1245] Milliken Woolens, Incorporated which sells finished goods.

Do you want me to go into breakdowns of the selling?

Q. Take the Greige Goods Department and break that down into its subdepartments. A. All right.

Basically it breaks down into three subdivisions; one, the print cloth sales, second the heavy cotton sales, and thirdly, fine goods sales.

Fine goods includes synthetic and blends of cotton synthetics and combed cotton fabrics. Those are the three major subdivisions.

Q. All right. Can you tell us who is in charge of the sales department overall? A. Of the greige goods sales?

Q. Yes. A. Mr. J. C. Harris.

* * *

[1246] A. Mr. A. J. Dillard is the Vice President in charge of Sales in Milliken Woolens.

Q. Now in the print cloth sales, who is the head of that department? A. Mr. A. J. May.

Q. And the heavy cotton? A. At the time I am speaking of it was Mr. A. A. Wright.

Q. Mr. Wright has since been replaced? A. Yes, sir, he has.

Q. And how about the fine goods? A. Well, there is Mr. W. R. Kuenzel who was in charge of that time. Mr. Kuenzel has since deceased.

Q. Now, are each of these departments further broken down? A. They are to varying extents, yes, sir.

Q. Can you tell us what those are? A. Well, broadly in regard to the merchandising, the men who are assigned to the merchandising of certain mills' production and sales, the particular responsibility for sales of certain mills and products.

Q. Let me see if I understand you.

For instance, in the print cloth sales, there are certain mills which produce print cloths. I think Darlington was among them? A. Yes, sir.

Q. How many mills were producing print cloths at that [1247] time? A. Selling through Deering-Milliken? A. Yes.

Q. I believe four.

Hearing Officer: Darlington and three others?

The Witness: Darlington and three others, yes, sir.

Q. (By Mr. Dyer) Now, for each one of these mills what was the term given to the sales person at Deering-Milliken? Was he called the "office manager"? A. No, sir.

Q. What was he called? A. Well, I think the "sales merchandiser" or "sales manager" of that particular mill, I believe. I am not absolutely sure of that, but I believe that is right.

Q. In other words there was one individual from the sales force who was assigned to sort of take care of the sales from each one of these mills, is that correct? A. It was his primary responsibility, if I may say it that way.

Q. In addition to that primary responsibility, he also sold goods from each of the other mills? A. Endeavored so to do, yes.

Q. Now, did the four men who handled the print cloth—I take it there were just these four that did that; is that right?

[1248] You only had four men who were handling print cloths? A. Well, I have said that I believed there were four mills selling through Deering-Milliken Manufacturing Print Cloths.

I believe I am also correct in stating that each mill selling through the Print Cloth Division of Deering-Milliken had a sales merchandiser responsible for the sales of the mills for which they were primarily responsible.

Q. Well, did these men endeavor to sell any of the heavy cotton goods as well? A. On occasion, certainly, yes.

Q. And fine goods? A. To very limited extent, I believe. There was not as much correlation of the fabric and uses in the fine goods.

Q. Well, under heavy cottons, would that encompass twills, twist, and so on? A. Yes, sir.

* * *

So you had a Print Cloth Department, a Heavy Cotton Department and a Fine Goods Department? [1249] A. Yes, sir.

* * *

Hearing Officer: Back on the record.

We were told officially that the person in charge of sales for each of these four mills, that we are speaking of is called the "Mill Merchandiser."

Q. (By Mr. Dyer) Now in similar fashion did you have mill merchandisers for each one of the mills producing heavy cottons? A. Yes, sir.

Q. And the same way for each one of the mills producing fine goods? A. Yes, sir.

Q. Now, in setting up sales meetings—I imagine you have sales meetings of the various personnel who are handling these goods?

Did the Print Cloth Department just meet by itself, or [1250] did it meet in conjunction with the others?

A. I believe I am correct when I state that the Print Cloth Department as a rule would meet with the Sales Personnel of the Heavy Cottons Department.

Q. In other words, those two were considered more together than the Fine Goods Department? A. The problems were more similar in nature, yes, sir.

* * * *

Now, in addition to the breakdown you have given us so far in the sales, did you have any other sub-departments that would come under sales? A. Now we are talking about greige goods sales for the moment, I presume?

Q. All right. A. Although not greige goods, a selling divison of Deering-Milliken and Company was the sale of diapers and crib sheets, the Infant Products Department.

Hearing Officer: Diapers and what?

The Witness: Crib sheets.

I have made reference to the sales made by Deering-Milliken's subsidiary, Deering-Milliken Export Corporation.

[1251] But those, again are not necessarily—or a large majority are not confined to greige goods. I am not trying to wander around the block.

Q. (By Mr. Dyer) The Export Corporation would mainly sell finished goods? A. Yes, sir.

Q. There would be some greige goods but not too much; is that the idea? A. Yes, sir.

I am not sure that they sell any greige goods.

Q. Now, under the Infant Products Department, what line would that come under? Would that come under Mr. Harrison in greige goods, or who? A. At that time I believe it did, yes, sir.

Q. Has it since switched? A. Yes, sir.

Q. It is under what department now? A. Mr. Dillard's.

Q. I see it has gone under Milliken Woolens? A. Yes, sir.

* * *

[1253] Q. (By Mr. Dyer) Now are there any other departments that report either to Mr. Harris or to Mr. Dillard besides the ones you have mentioned so far? A. Yes, sir. Reporting to Mr. Harris, the Quality Control Department [1254] for Greige Goods headed by Mr. Shotwell.

Q. That is the Quality Control Department? A. Yes, sir. The Fabric Development Department, which was for many years headed by Mr. Kuenzel. And although Mr. Kuenzel, a few years ago took over the sales administration of the Fine Goods Department, he delegated his responsibility to more than one person in the Fabric Development Department. The laboratory in New York performed services for both Mr. Dillard's and Mr. Harris Department. The Order Departments did not report to the sales heads, but, of course, they were responsible for much of the paper-work that was done for the Sales Departments.

Q. Did you call that the Order Department? A. The Order Department.

Q. Thank you. A. Of course that is true of a lot of departments, that although they may not report to Mr.

Harris, they render services to Mr. Harris in connection with selling the product.

* * *

[1255] Q. (By Mr. Dyer) Mr. Milliken, to get to another topic, then; can you give us a very short summation of the Milliken family, who they are, and the history of the corporation?

In other words, if you would start with Seth Milliken and come down with the descendants? [1256] A. Seth Milliken was the father of Seth Milliken, Gerrish Milliken and Margaret Milliken, now Mrs. Hatch.

Seth Milliken was the elder son and has five children. I am the fourth child.

Are you interested in my brothers and sisters?

Q. You are the son of Seth? A. Yes.

Q. Are there any of your brothers and sisters besides you who are in the business at the present time? A. No, sir.

Mr. Updike: It is a fact that your father was a medical doctor and not in the business at all; isn't that correct?

The Witness: That is also correct.

Mr. Dyer: Has he ever taken any interest in the Deering-Milliken business?

The Witness: No, sir.

Q. (By Mr. Dyer) What about Gerrish? A. Gerrish Milliken, my uncle, before his death had four children. Roger, Gerrish Jr., and Anne, and Joan. There was a third daughter, fifth child, who died at an early age.

Q. And how about Mrs. Hatch? A. Mrs. Hatch had five children of whom three died. And she now has Mrs.—her daughter Margaret, Mrs. Moore, and her son Richard.

Q. Will you tell us whether either Margaret or Richard [1257] are in the business; connected with Deering-Milliken in any way? A. Neither one is.

Q. What is the status on Joan and Anne? A. No.

Q. Neither one of them are connected with the business? A. No.

Q. Therefore of all the [Milliken family] descendants, it is only yourself, Roger Milliken, and Gerrish, Jr., who are presently in the business; is that right?

Does Mr. Hatch have an active interest in the business? A. No, sir.

Q. Mrs. Hatch does not? A. Mrs. Hatch does not. Mr. Hatch is an officer and director of Deering-Milliken and Company, the office being Vice President.

* * *

[1258] Q. In the body of the letter, reference is made to the D. M. Welfare Foundation. Can you tell us what that is? [1259] A. It is now known as the Deering-Milliken Foundation. It was then known as the Deering-Milliken Welfare Fund. It is a foundation organized for charitable purposes to which individuals and corporations make charitable gifts. It is administered by the City Bank Farmers Trust Company of New York.

* * *

Q. All right. You said various corporations contribute to it. Is Darlington among them? A. Yes, sir.

Q. You said it is used for charitable purposes? A. Yes, sir.

* * *

[1260] A. Well, let me ask this first. Were most of the monies received from the corporations affiliated with Deering Milliken?

[1261] A. Most of the funds were received from the corporations selling through Deering-Milliken or from Deering-Milliken itself or from individuals. I, for instance, was an individual that made gifts, personal gifts to the foundation.

* * *

A. No, sir. The operating head, the executive head of Deering-Milliken and Company is Roger Milliken, President.

Q. I see.

* * *

[1264] The Witness: Deering-Milliken and Company acts as selling agent and factor for Darlington Manufacturing Company. The factoring relationship might be termed a banking, or pseudo-banking relationship to Darlington.

In connection with that—in connection with the factoring responsibilities of Deering-Milliken Company, they undertake to check the credits of the various customers that the selling house might be selling for the account of the Darlington Manufacturing Company.

In addition, Deering-Milliken assumes all the credit responsibility, and immediately upon receiv-

ing a copy of a Darlington Invoice, Deering-Milliken and Company credits the account of the Darlington Manufacturing Company immediately. And the collection of the account from the customer is the factor's, namely, Deering-Milliken and Company, responsibility.

In the unhappy event the customer doesn't pay the account in full, Deering-Milliken and Company suffers the credit loss.

As such, there is great—or there are many credits and debits to the Darlington Manufacturing Company Accounts kept on Deering-Milliken books.

And as Treasurer of Deering-Milliken and Company, it was my responsibility to as efficiently and as foresightedly as I could administer the funds nominally in Deering-Milliken and Company's name and on deposit with a number of New York [1265] and other banks in the country.

And in order to do this job intelligently, efficiently and foresightedly, it was important for me to know as well in advance the estimated means which Darlington, Mr. Oeland Treasurer of Darlington, expected Darlington might be calling upon us, for instance, for the purchase of cotton raw materials.

The credit balances would be reduced on Deering-Milliken's books.

For example a large period of the year when the cotton inventory is declining and the sales are continuing in a uniform or increased rate, the credits to Darlington's account go up. So that I as Treasurer of Deering-Milliken found it very advisable and, I repeat only through this could I efficiently project the amount of money that Deering-Milliken and Company would have to be insured at all times that

whenever a call should be received by Darlington to have it available. Because all this money I am referring to that Darlington has on deposit with Deering-Milliken is payable on demand.

Deering-Milliken pays interest to Darlington Manufacturing Company on the monies left with Deering-Milliken.

Hence, it is to Darlington's advantage to leave as much as possible. Which means, however, we have to be ready promptly to make cash available in a cotton market, for example, for cotton raw materials purchases made by Darlington. That was a long answer and I apologize. But this was in line with my [1266] asking Mr. Oeland to give me as best he could at that time the forecast of figures.

Q. (By Mr. Dyer) You are asking him for his forecast of figures.

What are those figures for? Are those just for cotton purchases or are they for all—— A. No. The figures I am asking for really net out, sir, to the sales as projected which reflects the amount of money that will be credited to Darlington's Account.

Now, to be absurd for a moment, if there are no expenses on behalf of the Darlington Manufacturing Company, the amount of money left for Darlington's Account at Deering-Milliken and Company will enlarge. And it is my task as Treasurer to know that and how to best utilize that money.

* * *

[1268] Q. (By Mr. Dyer) Mr. Milliken I now hand you a letter addressed to you, dated September 30, 1955 from Mr. Oeland, [1269] and I ask you if you received a copy of that letter? A. Yes, sir.

* * *

Q. (By Mr. Dyer) In the first paragraph he refers to a discussion about your request for estimated profits. Was that by letter or phone? A. I have no way of knowing specifically, Mr. Dyer.

Q. In other words you made a request for Darlington's estimated profits before taxes for the fiscal year ending November 30, 1955, is that correct? A. Yes, sir.

Q. Can you tell us why Deering-Milliken would make a request of the mill for that? A. I can tell you exactly why I made this request. I made this request, the request of my cousin Roger Milliken, to all the mills which Deering-Milliken and Company factored to present for year-end tax review to Mr. Phillips who was Deering-Milliken's tax attorney and the tax attorney of many of the mills, in fact, all of the mills, for tax purposes for year-end dividend declarations.

Mr. Updike: Can we put Mr. Phillips' name in record. Is he Percy W. Phillips, of the firm of Ivins, Phillips and Barker in Washington?

[1270] The Witness: Yes, sir, that is correct.

Q. (By Mr. Dyer) Then this identical request was made of all the mills that sold through Deering-Milliken? A. I believe so, sir. The request of Roger Milliken for all the mills, yes.

* * *

Q. Now, further in that second paragraph, Mr. Oeland refers to the fact that at Darlington they are trying to expense all replacement items rather than to capitalize them.

Was this done just at Darlington, or did all of the mills associated with Deering-Milliken do the same? A. As far as I know. And I don't claim to know all the answers. But as far as I know, the mills expensed what was expensable under the existing tax laws to the greatest extent that it was expensible.

* * *

[1273] Q. (By Mr. Dyer) Mr. Milliken, can you tell us on what basis contributions were made to the welfare fund?

Was there any particular method or ratio on which the mills made contributions to the fund? A. The mills?

Q. That is right. Or the corporations, rather? A. The decision of the individual boards of directors.

Q. I see. Therefore, we would have to know—well, that is all right. Thank you.

Q. One further thing. Would the Board of Directors have to approve it at a board of director's meeting which would be shown in their minutes? Or do you know? A. I can speak for Deering-Milliken and Company.

Q. Yes. A. I know that the Board of Directors do approve gifts in blank amounts, not $12 to this and $17 to that, but in blank amounts of money, let us say, to the Deering-Milliken Foundation, and maybe there is another worthy charity cause. But that would be approved by the Board of Directors.

Hearing Officer: When you say "in blank amount", do you mean it is to the Deering-Milliken Foundation? Do you mean that amount is left blank?

The Witness: No. I am sorry, sir. The Board, as I recall it, instead of saying so much to one charity and so much to another, would say $50,000, which would be the total of all [1274] charitable gifts.

Mr. Dyer: Then who would apportion those to the D. M. Welfare Foundation?

The Witness: The foundation might be the recipient of the gift. It might not be.

Hearing Officer: It would be the foundation who would in turn apportion it among the spetific charities; is that correct?

The Witness: No, sir. I don't want misunderstanding on this. The Board of Directors of Deering-Milliken and Company approved the making of a gift from Deering-Milliken and Company of, let us say, a thousand dollars to the Deering-Milliken Foundation. The gift is done. It is irrevocable.

At some future date, the advisory committee of the Deering-Milliken Foundation makes recommendations to the City Bank Farmers Trust Company that the foundation give a hundred dollars to the American Red Cross, for example.

Q. (By Mr. Dyer) Then is it true that all donations to charity from Deering-Milliken are made to the Deering-Milliken Welfare Foundation, and from there they are apportioned out as the advisory committee advises? A. I am not sure that "all" is correct. Substantially all.

* * *

[1275] Q. Well, in your capacity as a Board member with other mills which are affiliated with Deering-Milliken, did they follow the trend set up by Deering-Milliken which you mentioned earlier?

Mr. Updike: Well, I would like to have you rephrase that question. I object to its form, "which are affiliated [1276] with Deering-Milliken" until we get into some definition of words like "affiliated" and so on. If you say other mills that sell through Deering-Milliken, I would have no objection.

Mr. Dyer: All right. Mills that sell through Deering-Milliken: is that the term you want?

Mr. Updike: Right.

Q. (By Mr. Dyer) All right. Mills that sell through Deering-Milliken? A. Not all those mills do make all their charitable gifts to the Deering-Milliken Foundation. There is one, I believe that has a foundation of its own name, to which it makes charitable gifts.

* * *

[1278] (By Mr. Dyer) Mr. Milliken, I now hand to you an exhibit which has been marked for identification General Counsel's Exhibit B-4, dated September 14, 1956, and addressed to Mr. Oeland from yourself. Do you recall writing this memorandum? A. Yes, sir.

Q. Is this in the same vein that you have described previously? In here you are asking for the pre-tax financial results for Darlington for the year ending December 2nd, 1956.

Hearing Officer: Did you say pre-tax?

Mr. Dyer: Pre-tax financial result, yes.

Q. (By Mr. Dyer) Again for what purpose was this? A. This was asked for a specific purpose, because a day or two before the Board of Darlington had met, and I returned to New York, Mr. Roger Milliken asked me to check again with Mr. Phillips to see the tax consequences and results should the stockholders vote to liquidate the Darlington Manufacturing Company.

And it was with that purpose in mind that I wrote to Mr. Oeland immediately upon my return to New York to give Mr. Phillips the best possible opportunity to review the situation as Mr. Oeland would submit the figures.

Q. Now, let me ask you this: When you received these figures for 1955 and 1956 from Mr. Oeland, did you send them to your own tax department at Deering-Milliken before sending [1279] them to Mr. Phillips? A. Well, the Administrative mechanics could have been that they would go from Mr. Kable's desk to be mailed to Mr. Phillips or from my desk to be mailed to Mr. Phillips.

Q. What I am getting at is this, Mr. Milliken: Did your tax department at Deering-Milliken in New York review the figures as presented by Darlington before they were sent to the attorney? A. Well, review in the sense that they look at them to see if perhaps there are any glaring or apparent errors or in substance or in form. But it was Mr. Phillips' review that I had been asked to get on this particular occasion. And in fact on past occasions.

Q. Well, let's go back to 1955 for a minute? A. Yes, sir.

Q. When Mr. Oeland sent in those figures for 1955 were they not the same type of figures sent in for all the mills selling through Deering-Milliken to you? A. For subsequent review by Mr. Phillips?

Q. That is right. A. I believe so. They were assembled in large measure by either Mr. Kable or by me and Mr. Kable, who, incidentally has not been identified here as the Secretary of Deering-Milliken and Company and as the head of the Tax Department, would [1280] communicate with Mr. Phillips or I would communicate with Mr. Phillips.

Q. Is Mr. Kable by chance a lawyer? A. I believe not.

Q. He is an accountant? A. Yes. He is a tax accountant of some repute and long standing.

* * *

A. Yes, sir.

Q. Is this the reply of Mr. Oeland to your letter which we have marked as General Counsel's Exhibit B-4? A. I believe that it is, yes, sir.

Q. Now in the last paragraph of this letter, Mr. Oeland refers to the fact that he has discussed with Mr. Kable the question of expensing items. Can you tell us whether this was something that was regularly done, that the mill treasurer would discuss questions whether to capitalize or expense an item with Mr. Kable? [1281] A. Mr. Oeland had discussed with Mr. Kable and sought Mr. Kable's advice as to how he would treat a certain item for tax purposes; that is correct.

Q. Does Mr. Kable regularly give such advice on expensing or capitalizing to the mills itself in Deering-Milliken? A. When such advice is requested, Mr. Kable does his best to give advice, and good advice.

* * *

(The document above-referred to was marked General Counsel's Exhibit B-6 for indentification.)

Q. (By Mr. Dyer) I hand you a piece of paper marked General Counsel's Exhibit B-6 for identification, being a memorandum, copy of a memorandum, dated March 12, 1956, addressed to several individuals from Mr. Shotwell. Do you know whether this originated from the New York office from Mr. Shotwell's Department? A. Well I feel certain it emanated from Deering-Milliken [1282] and Company, Mr. Shotwell's Department, yes, sir.

Q. Now, the names of the persons at the top, Marshall Stone, W. A. L. Sibley, J. J. Norton, Jr., and J. M. Oeland; can you identify the first three gentlemen for us? A. Mr.

Marshall Stone is the Treasurer of the Pacolet Manufacturing Company. Mr. W. A. L. Sibley is the Treasurer of the Monarch Mills.

Mr. J. J. Norton, Jr., is the Treasurer of the Gaffney Manufacturing Company.

Q. This memorandum is in regard to Mr. Shotwell's taking over the quality control department? A. Yes, sir.

Q. At Deering-Milliken, is that right? A. Yes, sir.

Q. Now, can you tell us the functions and purpose of the Quality Control Department at Deering-Milliken? A. I urge you to interrupt me if I get long-winded.

The Quality Control Department of Deering-Milliken and Company, under Mr. Shotwell—which, incidentally, is the department concerned only with greige goods as opposed to finished goods—is to work diligently on the settlement of claims.

For example, if a customer has any question on the quality of goods sold by Deering-Milliken for the account of, say, Darlington and the customer is dissatisfied or in any [1283] way not pleased with the—or claims that the goods are not as sold, it is Mr. Shotwell's job or some one working with Mr. Shotwell to go to the customer. And prior to this time——

Mr. Updike: What is "this time"?

The Witness: Excuse me. March 12, 1956.

Mr. Shotwell's Department was engaged in the Quality Control of the Fine Goods sold by Deering-Milliken. And over a period preceding time, more and more occasions arose when Mr. Harris would ask Mr. Shotwell to get into a cotton goods problem. And it resulted that Mr. Harris wanted Mr. Shotwell to officially take over the processing of claims for the cotton fabrics as well as the fine goods.

In addition to that, Mr. Shotwell was experienced in going to finishing plants who do commission finishing for a vast number of customers in the Textile Industry, to test, for example, a new fabric that might be made by a mill and offered for sale by Deering-Milliken.

You can't tell much about it in the greige.

So Mr. Shotwell would expedite the fabric and even make recommendations to the Commission finisher or how best to finish this particular fabric so that we would be in the position of anticipating the customer and saying, well, now, this is a piece of greige goods and what it is going to be like finished.

We wanted to know the—the mills treasurer and [1284] manufacturer wanted to know. And that was another one of Mr. Shotwell's responsibilities.

Those are, as I understand it, the broad classification of Mr. Shotwell's functions.

Q. (By Mr. Dyer) What does Mr. Shotwell utilize in his functions? You say he and some others in this Department?

Do they use a laboratory to detect what has gone wrong with the goods or something like that? A. Well, in New York we have an area for Mr. Shotwell that he can call in pieces of goods from the customer, or he can call in pieces of goods from the finishing plants, the commission finishers, and look at the cloth in Deering-Milliken's office in New York

He certainly can utilize the facilities in the laboratory which Deering-Milliken maintains and frequently does utilize those services.

Q. Most of the time it is a visual inspection, is that right? A. On claims of faulty merchandise, most of the time. I would think the answer is most of the time, yes.

Q. I think it was stated that this Quality Control Department originated in 1950; is that correct? A. I think that is correct.

Mr. Updike: At least as early as 1950.

Q. (By Mr. Dyer) Had the laboratory been established before [1285] that, or was it established since that time? A. The building that housed the laboratory, I think in 1940 the laboratory was an original part of that in New York.

* * *

[1286] Q. Wouldn't most of your complaints come from customers as the goods were being finished at their finishing houses, whichever they were? A. I am glad you mentioned that. The complaints come in and Mr. Shotwell is hard pressed at times to determine whether the complaint is warranted by faulty finishing or by faulty weaving, because in one case it is one responsibility, and in the case of faulty finishing it is either the responsibility of the commission finisher or the converter customer.

Q. All right. A. It is certainly not the mills who wove the goods.

Q. Now, when Mr. Shotwell makes his determination after looking at the cloth, suppose he things that it is the mill's fault; that the weaving was imperfect. What does he do then? [1287] A. A He would seek the recommendation—he would make his recommendation as to how the matter should be resolved to the mill treasurer, in question which might or might not be bought by that mill treasurer.

Hearing Officer: By the what?

The Witness: Might not be bought by the mill treasurer in question.

Mr. Updike: You mean might not be accepted by it?

The Witness: I am sorry. Might not be accepted by it. That was a little slang. I apologize, Mr. Dyer.

Mr. Dyer: No apology necessary.

Q. (By Mr. Dyer) Does Mr. Shotwell make the reports directly to the mill treasurers, or does he make his reports to the sales manager, that is, Mr. Harris? A. Both. Certainly Mr. Harris is very interested to know what Mr. Shotwell thinks about the complaint in question. But Mr. Shotwell is on the firing line. He is very experienced. And he can better convey the information to the mill treasurer, because he is right there to answer specific questions on the telephone or through letters or in person, as the case might be.

Q. Now, where it is decided by Mr. Shotwell that the fault lies in the finishing, what process is followed there? A. He also reports that back to the mill treasurer and says, I don't think that this is your fault at all. My [1288] recommendation is—and I have told the customer in question—is that we don't feel that it is the mill's fault. And, hence you had better look for recourse to the finisher or whoever else is involved.

* * *

[1289] Q. (By Mr. Dyer) In Exhibit 6, Mr. Shotwell talks about arranging a meeting with these gentlemen. Do you know whether such a meeting was arranged? A. Whether it actually took place?

Q. Yes. A. I do not. I know Mr. Shotwell generally took over the Quality Control functions for the cotton fabrics.

* * *

Q. (By Mr. Dyer) Now, the second page is a letter addressed to Mr. Shotwell from Mr. Oeland dated May 10, 1958.

* * *

[1290] Q. (By Mr. Dyer) Now, in this letter, Mr. Shotwell talks about truth marks and suggests that they be adopted.

Hearing Officer: Truth marks?

Mr. Dyer: Truth marks, yes.

Q. (By Mr. Dyer) And suggests that they be adopted by the—that this be the print cloth mills. A. Yes, sir.

Q. Now, can you tell us whether Mr. Shotwell's suggestion was followed? A. Specifically, no. But indication of Mr. Oeland's reply, the comments in pencil, my educated guess is yes.

Q. Well, let me ask you this: Would this be a sample or an example of the services rendered by the Quality Control Department of Mr. Shotwell to these mills? A. I think so, yes.

* * *

[1291] Q. Did you know whether all of the goods sold through Deering-Milliken do have truth marks at this time? A. I know that—I believe the answer is yes. But I would rather you got that confirmed elsewhere.

* * *

[1316] Q. (By Mr. Dyer) Mr. Milliken, I have just handed you an exhibit marked for identification as General Counsel's B-9-A, B, C, and D, the new Organizational Chart of Deering-Milliken.

I ask if this was prepared with your help? A. It was.

Q. Now the first page, 9-A, does that set out the main officers of Deering-Milliken? A. Yes, sir.

Q. Now, can we go through them this way.

Mr. Kingsley is listed as a vice president? A. Yes, sir.

Q. What particular function does he serve in his capacity as vice president? A. Mr. Kingsley is, if I may coin a phrase, vice president without portfolio. He is a man of sixty-three, and he has had vast experience in banking and retailing and merchandising fields, and he has been with Deering-Milliken and Company for I believe fifteen years. And he has contributed substantially to the organization.

Q. I was wondering what particular department of Deering-Milliken does he advise? Would that be Mr. Kable's [1317] Department? A. No, sir. As the chart indicates, Mr. Kable's Department reports to me.

Q. I see. But you say he has had a lot of experiences?

Hearing Officer: I think so that it would be clear to anyone who reviews the record, the last reference was to General Counsel's B-9-B.

Mr. Dyer: That is right.

Q. (By Mr. Dyer) Getting back to General Counsel's B-9-A, just what is his capacity in advising in these fields? Who does he advise? Does he advise you or who? A. With some frequency, Mr. Dyer.

Q. I see. In other words, his advice goes more or less to the Treasurer's Department, is that right? A. No. Perhaps I should say that Mr. Kingsley is—I am not sure he would like to hear this—but in quotes, "an elder statesman."

Mr. Kingsley, because of his vast experience over the years, is in frequent consultation with me, with my cousin, Roger Milliken, to a lesser extent but with some frequency Mr. Harris, in sales; and also Mr. Dillard in sales.

Q. I see. And he just serves as a general know-it-all man? A. Well if we can smile in the answer, I will say yes.

Q. I didn't mean the phrase in the sense it is usually used.

Hearing Officer: While we are using terms that Mr. [1318] Kingsley probably wouldn't like, let's say he is a general factotem.

Q. (By Mr. Dyer) Now, I note that there is a chart, General Counsel's B-9-B, which refers to you? A. Yes, sir.

Q. And General Counsel's B-9-C refers to Mr. Harris? A. Yes, sir.

Q. Can you tell us just where Mr. G. H. Milliken would fit into this I see he is listed as vice president of Automotive Sales? A. That is reflected on General Counsel's B-9-A. Mr. Gerrish Milliken is shown in the chart form as being the vice president in charge of automotive sales.

Q. Can you tell us what automotive sales refers to? A. Yes, sir. It is the sale of fabric to the automotive industry for automobile interior.

* * *

Q. Is this distinct from the Milliken Automotive Fabrics, [1319] Incorporated? A. Milliken Automotive Fabrics, Incorporated was a corporation for which my cousin, Gerrish Milliken, sold through Deering-Milliken Company. That corporation is no longer in existence as such.

Q. Would his department cut across several lines? In other words, looking to the—— A. Well, perhaps I can answer your question by saying that the large majority of the fabrics sold to the automobile trade are manufactured in Abbeville Mills in Abbeville, South Carolina.

Q. In other words, then, Mr. Gerrish Milliken acts mainly for the Abbeville Mills; is that correct? A. That is correct.

Q. I see.

Mr. Updike: Was this also true in September and October of 1956?

The Witness: Primarily, yes, sir. I am not sure, Mr. Updike, when Milliken Automotive Fabrics ceased to exist as a corporate entity. But it was not far from early 1957 or late 1956, as I recall it.

* * *

[1328] Q. Now, the next thing is: can you tell us under what department of the sales corporation Abbeville Mills was in 1956?

Mr. Updike: Department of the Sales Corporation.

Mr. Dyer: Pardon me. Of the Sales Department.

What I am trying to find out is this: Whether Mr. G. [1329] H. Milliken's position crossed the sales department lines in some respect.

The Witness: No, sir. He sold automotive fabrics exclusively.

Q. (By Mr. Dyer) Did Abbeville produce other fabrics which were sold through other departments than the sales department? A. Yes. Abbeville produced other finished fabrics which were sold through Milliken Woolens.

Q. I see. In other words to come right down to it, Abbeville had two, which we call merchandise men at that time? A. Selling departments, yes.

Q. All right. Now, can you tell us what position Mr. H. A. Hatch, as vice president, had? A. Yes, sir. My uncle Mr. Hatch is a man in his eighty-third year, and was during his business life, an associate of my uncle, Mr. Gerrish Milliken. And he has been semi-retired for a number of years.

And at the moment plays less than an active part in the business. He is, as you know, no longer a young man.

Q. Well, in what—in that capacity, shall we use the term "general factotem" again? A. A relatively inactive general factotem.

Q. All right, fine.

Now, may we turn to General Counsel's B-9-B, the second [1330] page.

Can you tell us just what Mr. Flanigan does as the controller of Deering-Milliken? A. Yes, sir. Mr. Flanigan was in charge of the accounting department. He reported to them—may I put it that way, please—he reported to the accounting department of Deering-Milliken.

As indicated on General Counsel's B-9-B, the personnel group insurance, the building department which is 240 Church Street, the maintenance department, the office management, which had as its component parts the eight various subdivisions shown on the schedule.

Q. May I ask: When you refer to the group insurance in the exhibit, is that group insurance for the employees of Deering-Milliken and Milliken Woolens exclusively? A. Deering-Milliken and Milliken Woolens exclusively, yes, sir.

* * *

[1332] Q. Now in factoring, you have Mr. J. R. Smith as Vice President. Can you tell us exactly what the credit and factoring department does?

I mean—— A. I would be glad to try, sir.

As I mentioned yesterday the functions—I will try not to be as long-winded as I was yesterday—the functions of the credit and factoring department are to maintain a credit department to check on the credit standing of customers or potential customers of Deering-Milliken and Company.

The accounts receivable is under Mr. Smith's jurisdiction, inasmuch as it is a very closely allied department and it is important to know the status of a customers account, and hence our receivable; whether additional credit facilities should be extended; whether or not the payments are being received on time; whether or not the customers' credit line has been reached, and other things.

Mr. Smith is naturally the man who has reporting to him the cashier. As the physical checks payable to the order of Deering-Milliken and Company are received from customers, they are cleared into the cashier's department. And then a checklist is referred to the accounts receivable department, so that we can assure that all checks received from customers are properly credited to the accounts of the customers.

[1333] Mr. Smith works very closely with me at my request on the financial administration of the company.

The mill information as to the mill deposits with Deering-Milliken are naturally of great concern and interest to us. As in the case, naturally, of all factors, it is common practice to have the financial department, if I may call it that, to have access to the financial deposits, credits and charges to the mill's account. I have tried to go across the chart here, General Counsel's B-9-B, to explain in some detail the functions of Mr. Smith.

* * *

Q. (By Mr. Dyer) Can you tell us what Mr. E. L. Weyer does in his position as special assistant? A. Just about anything and everything that I think of to ask him to do for me. I don't mean to be too general in my answer. There are a number of things that—there are special jobs, things connected with my family and other matters of that type.

* * *

[1334] Q. Now, can you tell us generally what insurance department does under Mr. Wilson? A. Yes, sir, generally. Mr. Wilson is head of the insurance department. He handles all of the insurance for Deering-Milliken and Company. And I would like to say that when I say Deering-Milliken and Company, more often than not I am including Milliken Woolens.

Q. I see. A. We had an office at 240 Church Street. And Milliken Woolens has an office at 1407 Broadway doing insurance problems connected with both. Mr. Wilson acts in that capacity.

[1335] Mr. Wilson, as an experienced knowledgeable fellow in the insurance business, rendered advice when requested to many of the corporations whose products were sold through Deering-Milliken and Company. Through his offices, he was able to recommend perhaps how better coverage, fire and extended coverage, for example, could be acquired by the mill corporations by doing certain things which would result in lower premiums, or perhaps for the same premium cost obtain greater coverage.

* * *

[1336] Q. I see. I believe you stated yesterday that the Quality Control Department as shown on General Counsel's B-9-C was a more or less new department that was opened up following a request from Mr. Harris of Greige Goods?

[1337] A. No, sir, I don't think I did testify to that. I think we established that the Quality Control Department was formed about 1950, and that Mr. Shotwell and Mr. Harris—I believe you should refer me to a memorandum written some time in 1955—at which time Mr. Shotwell expanded his duties to take on the Quality Control functions on print cloth and other cotton fabrics as well as on fine good fabrics.

Q. I see. I was trying to establish the difference between the Quality Control on 9-C and 9-D. A. They are similar functions and different personnel altogether.

Q. I see. In other words Mr. Shotwell does not have anything to do with the Quality Control Department as shown on 9-D? A. No, sir. That is headed by Mr. Duncan Stewart.

Q. I see.

Now, the laboratory that is available, is that used by both Quality Control Departments? A. Yes, sir. I see an error of omission. It would have been—I think I do anyway—the laboratory facilities are made available to the finished goods of Milliken Woolens' Sales Division as well as to the greige goods.

Q. I see. A. So that this chart should be amended, if I might suggest it, to add laboratory under the direction of Pat D'Alessandro as available to the finished goods sales as well.

* * *

[1339] Q. (By Mr. Dyer) I think my next question was: Can you tell us what the fabric development department does? As shown on General Counsel's B-9-C. A. Yes.

In a general way I can tell you. Mr. W. R. Kuenzel, who headed the fabric development department, prior to his association with Deering-Milliken and Company had worked

for the [1340] Dupont Company. And if my memory serves me correctly, he joined Deering-Milliken and Company in the mid-forties; and he was an exceptionally well-trained man in the textile business. And he knew constructions of fabrics; he knew the virtues of yarns. And in the textile business, certainly since World War II, the development of new yarns has been—and new fibers—has been going along at a very rapid pace.

Mr. Kuenzel had the imagination and the inventiveness to try to utilize, as was done, may I add, by all our competition in the textile industry, the new fibers and fabrics. And the Fabric Development Department, as such, was to try to suggest the constructions of fabrics, the yarn counts, and the lay-outs of fabrics to produce a desired end result.

And Mr. Kuenzel would work in close cooperation with the mill treasurers who were avidly seeking ways to utilize these new developments coming along in the textile industry.

And I think I am safe in saying that there was no one in the textile industry—or at least he was generally regarded in the textile industry as being the outstanding fabrics man because of his background and understanding of the business.

* * *

[1341] Q. Now, would it be necessary to make trial runs of these various percentages? A. Unfortunately, yes, sir.

Q. How would he do that? A. Well, he wouldn't do that.

Mr. Kuenzel would put on paper the theory—he would put on paper his concept of how it would best be done. Unfortunately even with Mr. Kuenzel that seldom worked the first time. But the mill would say well, this sounds like a good idea; let's try it. And we would carry it through

to its conclusion. And perhaps the mill would—the treasurer of the mill working perhaps in conjunction with Mr. Kuenzel would say, if this were changed or altered a little bit it would be better. Let's try it again.

Q. Were these tests run mainly at the various mills or through research—through the research corporation? A. No. They were run basically—the fabrics were woven at the mill.

* * *

[1356] A. Well, I don't know, but I presume so, yes, sir.

Q. Now, in this memorandum, Mr. Burchard talks of the fabric magic book. Can you tell us what that is? A. Yes, sir.

Fabric Magic Book was prepared with the assistance of Amos Parrish Company, in connection with a forthcoming presentation which we were putting on at the Waldorf-Astoria Hotel in New York to introduce a new fabric already referred to, which was lorette.

And we invited to that meeting a large number of ready-to-wear manufacturers, retailers in the persons of store heads, merchandise managers and buyers of womens apparel that might be made out of lorette.

We also invited a few—in fact I believe many suppliers of yarn. Certainly the Dupont Company which makes orlon had some of its key fellows in the textile department invited to [1357] this dinner.

And fabric magic was prepared primarily in that connection for that distribution. And it was subsequently distributed by us to other retailers who were unable to come to New York, or who were unable to attend that dinner.

Q. Now, had this promotion taken place before this memorandum was written or afterwards? A. It had taken place before.

Q. And in this memorandum Mr. Burchard refers to having a supply of the books available in New York. And

looking at the second paragraph, he says that in the interest of having them well distributed to more mill employees, we would sell these to you at the very low price of 15 cents per copy.

Now, can you tell us whether orders were received from the various mills selling through Deering-Milliken for copies of these books? A. No, sir, I can not tell you that. I don't know.

* * *

[1360] Hearing Officer: Are we going to come back to this later?

If not I will ask now who bore the expense of the production of these books?

* * *

The Witness: Deering-Milliken Company bore the expense of having these books prepared.

* * *

[1365] Q. Let me put it this way.

There are some items of equipment which have been in the mill to begin with, various frames? A. Yes, sir.

Q. You would have—which were originally capitalized? A. Yes, sir.

Q. You would have property records of those? A. Yes, sir. As far as I know.

Q. You would also have property records of all new equipment which was capitalized? A. I believe so.

Q. What about equipment that came in as an expense item? For instance, replacements? Would you not have property records of those items? A. When you say "you", do you mean me, or do you mean the mill.

Q. Well, the mill and Mr. Kable's department. A. No. I don't wish to—this is subject to correction, but I believe the fact that Darlington as a mill has of course its own

property records. I do not think it is the practice of Mr. Kable to keep property records of Darlington's property accounts. However, Mr. Turnowski, if we are referring specifically to him, was asked to aid and assist the mill treasurer, Mr. Oeland to properly keep the records in accordance with capitalizing or expensing.

* * *

[1366] Mr. Dyer: All right. I will see if I can clear it up.

Q. (By Mr. Dyer) For instance, on a spinning frame where a certain type of equipment, say the rollers on it, were replaced by new rollers; would such an items as expense item be noted on the property record for the frame itself? A. If it were treated—if it were expensed, you mean?

Q. That is right. A. I have no way of knowing specifically the answer first of all whether it would be expensed or not. But as I understand it, a property record—and I have nothing to do with [1366-A] the property records at Darlington, or any other mill for that matter—but as far as I know, a property account would reflect as an asset on the balance sheet, and, hence, is a capitalized item.

* * *

Q. (By Mr. Dyer) Mr. Turnowski was employed by Deering-Milliken; is that correct? A. He was.

Q. And his job there was to handle the property accounts for Mr. Kable? A. Well, really for Mr. Roger Milliken.

Well, do you want me to repeat the earlier answer, Mr. Dyer. I had hoped that I had answered that question.

Mr. Dyer: I thought I had it correctly, but maybe I didn't.

Q. (By Mr. Dyer) Would you repeat it please? A. Mr. Turnowski was employed by Deering-Milliken and Company. He worked with Mr. Kable as an assistant, we might [1367] say, to Mr. Kable at the request of Roger Milliken to give whatever advice and tax handling, property account handling, to the mill treasurer, Mr. Oeland, for example, to the best of his ability.

Q. Now, were there any other persons working at Deering-Milliken who did similar work under Mr. Kable's direction as Mr. Turnowski? A. None that I know of, sir.

Q. Was Mr. Turnowski made available to the various mill corporations selling through Deering-Milliken to help those mill corporations with their property records? A. To the best of my knowledge, yes.

Mr. Updike: Mr. Dyer, Mr. Schoemer tells me that the Darlington Property Records were submitted to you for your examination. And if there is any area of ambiguity with regard to what was done, perhaps if you wanted to show those records to the witness, the record would be clearer as to what actually was done by the Darlington management.

Mr. Dyer: If I recall, I don't believe I took copies of those. I think they remained in the files in Spartanburg.

So I don't have those available.

Mr. Updike: I am sorry. I misunderstood. I thought you, in addition to having them opened to your inspection, that you took copies of them.

Q. (By Mr. Dyer) The property records maintained, for [1368] instance in Darlington towards the close of the taxable year, would a copy of those records or the records

themselves be sent to Mr. Kable's Department? A. I certainly believe not.

Q. Would any accounting—let's say a summary of the property records—be sent to Mr. Kable's Department? A. Well, I think in the review of additions or disposals of capital items it is very likely that Mr. Oeland, for instance, might have consulted with Mr. Kable or with Mr. Phillips as to the best and proper tax handling of such additions or disposals. But I seriously question that it would have been more than an individual question, or perhaps a conversation in New York when Mr. Oeland was there or a conversation in Darlington if Mr. Oeland were to ask Mr. Kable to come to Darlington.

* * *

[1369] All Darlington mill property records were kept at Darlington.

Q. I understand the mill would keep its own property records. What I am asking is if Mr. Turnowski had copies or summations of those which he kept in New York? A. I am advised no.

* * *

[1371] The Witness: Well just in this brief recess, Mr. Oeland informs me that Mr. Turnowski was very helpful in working with Mr. Oeland and his office man on the—well, the formation and the form of the accounts.

His work did not concern itself so much as to which items should be capitalized and which should not. It was for the ease of the preparation of the property records and the ease of interpretation of the property records in which [1372] Mr. Turnowski was valuable to Mr. Oeland and his staff at Darlington.

Q. (By Mr. Dyer) In other words it was the outline of how to maintain the records and how to set up the records that Mr. Turnowski did? A. That is the way I understand it from Mr. Oeland now, yes, sir.

* * *

Q. Mr. Milliken, can you tell us what charges, if any, were made of the mills for Mr. Turnowski's services? A. I believe none. But I would like to check that.

* * *

[1376] (The document above-referred to was marked General Counsel's B-18 for identification.)

Q. (By Mr. Dyer) Mr. Milliken, I hand you a 2-page document that has been marked for identification, General Counsel's B-18, and ask whether this was issued by the controller, Mr. Flanigan from the New York Offices of Deering-Milliken? A. No. It is indicated it was issued by Mr. H. E. Williams, who was working in the accounting department for—reporting to Mr. Flanigan. And it was approved by Mr. Flanigan.

Q. I see. Then, it was issued after approval by Mr. Flanigan? A. Yes, sir.

Q. Now, the heading of this is "Controller's Division, Standard Practice Instruction."

Would this document be one of a series of instructions issued by the Controller's Division? [1377] A. Well, the instructions to the Controller's Division in New York.

This is a summarization, if I may use the word, of the previously decided fiscal year-ends by the mills listed on the second sheet.

Q. Well, was the controller's division to determine what the fiscal reporting periods would be and the year-ending

dates? Isn't that correct? A. No. The fiscal years are determined by the Boards of Directors of the various mills.

In this particular year, the year-end was November 27, 1955. I think prior to this time most of the mills were on a fiscal year-end of November 30. And I don't know which mills, but somebody had the briught idea that it might be a whole lot better to end the fiscal year on the Sunday nearest November 30. And that idea was suggested to a number of mills. And I believe without exception the Board thought it was a good idea and adopted it for each company.

And this exhibit, General Counsel's B-18, was a way of Mr. Flanigan's, who had all the information submitted to him about these fiscal year-ends, stating the fiscal periods that he understood the billings were going to use.

And he distributed it to, oh, I don't know—seven people, 10, 15 people in New York—well there were a number of people. I don't have to add them. In addition to which [1378] he distributed it to the mill treasurers or the mill office managers for their records.

Q. (By Mr. Dyer) Now, the financial records of all of the mills selling through Deering-Milliken as well as Deering-Milliken itself are on a four-week period; is that right? A. I believe that is correct.

Q. And the dates which are established by this memorandum are the dates for the closing of each of those four weekly periods? A. The dates reported here are the closing dates, yes, sir.

* * *

[1380] (The document above-referred-to was marked General Counsel's Exhibit B-19 for identification.)

Q. (By Mr. Dyer) Mr. Milliken, I now hand you a memorandum dated October 13, 1955 marked for identification, General [1381] Counsel's B-19.

* * *

Q. (By Mr. Dyer) This is addressed—well, can you tell us who it is addressed to? I recognize Mr. Oeland's name and some of the others. But is this to the Mill Treasurers? A. In some instances, yes; and—well, I don't recognize all the names myself. But it seems that a large majority of them are office managers of the mills.

* * *

[1382] Q. I see there are copies listed at the bottom to Mr. Fechtmann and Mr. E. S. Hill? A. Mr. Hill was the Chief Accountant in the Accounting Division of Deering-Milliken and Company and Mr. Fechtmann was his assistant.

* * *

[1397] Q. (By Mr. Dyer) Mr. Milliken, I hand you now for identifying, General Counsel's Exhibit B-20. dated October 11, 1956, a memorandum addressed to Mr. Oeland from Mr. Flanigan.

Can you tell us if this originated in the New York Office of Mr. Flanigan? [1398] A. Yes, sir,

* * *

Q. Can you tell me whether this same memorandum would have been sent to all of the mills selling through Deering-Milliken? A. Well, I would doubt it very much. I would think that it certainly would not have been sent by Mr. Flanigan to the mills who furnish the information from which Mr. Flanigan quotes.

Q. All right. A. But——

Q. Well this would have been sent to all other mills: is that correct? A. I would believe that is correct, Mr. Dyer.

* * *

[1404] (The document above-referred to was marked General Counsel's Exhibit B-21 for identification)

Q. (By Mr. Dyer) Mr. Milliken, I have now handed you an exhibit marked for identification, General Counsel's B-21, dated March 16, 1956, which is a copy of a letter addressed to you from Mr. Oeland. Did you receive such a letter, sir?

* * *

[1405] Q. (By Mr. Dyer) It refers to your letter of March 13. Can you tell us what was in your letter of March 13 to Darlington? A. Certainly not verbatim.

Q. No. But in general? A. It came to me—to my attention that the Pacolet Manufacturing Company had amended its vacation plan in such a way as to gain greater tax, income tax, advantage. And it was, I felt, incumbent upon me to advise Mr. Oeland of that inasmuch as he might wish to investigate the tax feature of the plan to see if he could avail himself of the same amendment.

Q. Did you also notify any of the other mills of this plan? A. I feel reasonably certain that I did.

Mr. Dyer: May I have this marked General Counsel's Exhibit B-22?

* * * *

[1406] Mr. Milliken, I have also handed you an exhibit marked for identification, General Counsel's B-22, a letter addressed to Mr. Bob Netter, dated April 9, 1956 from Mr. Oeland. A. Yes, sir.

Q. Was that received in your New York office? A. Yes, sir.

Q. Can you tell us who Mr. Netter is? A. Mr. Netter is Mr. Kable's assistant in the tax department of Deering-Milliken and Company.

Q. Was the Pacolet Vacation Plan discussed by the tax department of Mr. Kable's? A. The tax aspects of it were.

Q. All right. And was that discussed by that Department prior to approval by the Treasury Department? A. As I recall it, the Pacolet Manufacturing Company sought the best tax counsel it could acquire in the preparation of the amendment for submission to the United States Treasury Department. And I feel reasonably confident that whoever was handling this at Pacolet would have discussed this with Mr. Kable as well as other competent tax advisers.

Q. Let me ask this. Were there any other mills selling [1407] through Deering-Milliken that were using the Pacolet plan prior to Pacolet's taking it up? Or was Pacolet the originator of this plan? A. Pacolet I believe was the first to get the specific ruling from the Treasury that gave benefit to—let me start again—that gave the beneficial tax consequences, as I remember it.

Q. All right. Was this plan thereafter adopted by all the other mill corporations selling through Deering-Milliken? A. You mean this amended so as to take advantage of the tax element?

Q. That is right. A. I don't know for sure. But my impression is that it was.

Therefore, you, along with maybe Mr. Kable, made known to all the other mills the benefits that could be gathered by adoption of this tax plan? A. The tax benefits, yes, sir. In thinking, I think I can safely say that every mill did take advantage of this tax benefit.

* * *

[1408] Q. (By Mr. Dyer) The second paragraph starts off: "It is my understanding that at our next director's meeting you would advise our adopting the plan sent to us of Pacolet Manufacturing Company."

Was it Mr. Netter who gave that advice to Darlington? A. Well, I presume yes.

Mr. Netter is saying, I believe, as I read this that if the management of the Darlington Manufacturing Company wishes to adopt this, that he recommended to Mr. Oeland that it be taken up and made a formal part of the Director's minutes. I believe the Board of Directors would be the group to amend the plan.

Q. The plan as such in all of its entirety was sent to Mr. Oeland? A. I don't know that, sir.

Are you referring to the second paragraph in General Counsel's B-22? Does that lead you to conclude that?

Q. That is right. A. Where it says, "It is my understanding that at our [1409] next Director's meeting you would advise our adopting the plan sent to us of the Pacolet Manufacturing Company."?

Q. Yes. A. That is the word. Certainly it would not have been sent by Mr. Netter. I mean it doesn't say that at all.

Mr. Netter was advising as to the tax. And I have no way of knowing, except reading this, whether the provision of the plan with which Mr. Oeland was primarily concerned here was sent or whether the whole plant was sent. I wouldn't know.

* * *

(The documents above-referred to were marked General Counsel's B-23, B-24, for identification)

Q. (By Mr. Dyer) Mr. Milliken, I have handed you two exhibits marked for identification, General Counsel's B-23 and B-24. The first is a memorandum addressed to Mr. C. L. Watford from E. S. Hill, dated April 17, 1956.

[1410] The second is a letter addressed to E. S. Hill from C. F. Watford dated April 23, 1956. A. Yes, sir.

Q. Now, Mr. Hill, is in what department at Deering-Milliken? A. Mr. Hill was the chief accountant reporting to Mr. Flanigan, the controller.

Q. And Mr. Watford was the accountant at Darlington, is that correct? A. That is correct.

Q. Now, can you tell us whether this same letter, that is General Counsel's B-23, was sent to the other mills selling through Deering-Milliken? A. Well it certainly wouldn't have been sent to the mill that made the original suggestion as to the amendment to Form 3550-DC. A. It probably was sent to the other cotton mills selling through Deering-Milliken.

Q. All right. Now the reason I stated that is that it seems in looking at the exhibit that this would appear to have been a carbon copy with Mr. Watford's name typed in later? A. That is the way it appears to me.

Q. All right.

Now, can you tell us what expense detail Form 3550-DC is? A. It is a part of the financial statement form that is [1411] prepared periodically in the accounting periods by Darlington and some of the other mills.

Q. You say it is what type of form? An accounting form? A. Well it is part of the financial report for the accounting periods.

Q. All right.

And is that financial report standard through all of the

mills? That is, it would be the cotton mills in this instance, selling through Deering-Milliken? A. To the best of my knowledge the forms have little or—I am not sure that they have any differences.

We have endeavored to get the financial information that suits the purposes of the factoring division, or the controller's division, in Deering-Milliken Company to be able to submit information or get information as easily as possible. And hence I think that the mills have devised a form. And if one change has been recommended and good for one mill, Mr. Flanigan or some one in his department has passed it out and suggested that that change be incorporated in other mills.

Q. And can you tell us who originally got up the form itself? A. Oh, gosh, I don't even know when they were first gotten up, Mr. Dyer.

Q. What form—— [1412] A. We are talking about what form?

Q. 3550-DC? A. Prepared at the mill for the mill treasurers' use primarily. I don't know who originally got up the form. It is a form I believe that is the result of a bunch of evolutionary processes, just as this is a suggestion to amend the form.

Q. Now you say it is gotten up primarily for the benefit of the mill treasurer? A. Yes, sir. This is a form that Mr. Oeland's office had prepared by Mr.—that Mr. Oeland had prepared by Mr. Watford. It was submitted to Mr. Oeland. And a copy was sent to New York.

Q. All right.

Well, a copy of each of these forms from each of the mills is submitted to who in New York? A. Mr. Flanigan's Department.

Q. For what purposes? A. Well, as I have just tried to state, the financial division, the relationship that exists between the mill and Deering-Milliken and Company, the mill's factor, it's very important that we know the balance sheet items that we are concerning ourslves with whether or not the cash forecasts the profit and loss relationship. It is a long-standing rlationship that existed between Darlington and many other mills and Deering-Milliken and Company. And somtimes Deering- [1413] Milliken & Company—it is like the relationship with a bank. As you submit figures to banks. We do it on the forms requested. Certainly when Deering-Milliken and Company has been a borrower of funds from banks, we have submitted practically every available type of financial information that the bank is concerned with as to Deering-Milliken as a credit.

* * *

[1417] Q. (By Mr. Dyer) Mr. Milliken, I have handed you a 3-page document, the top page being a memo addressed to Mr. Oeland from Mr. Flanigan dated June 18, 1956. The last two pages are a separate memo, dated June 15, 1956, addressed to Mr. Flanigan from Nils O. Neilson.

The first page, the memo, encloses the second memo to Mr. Oeland.

May I ask, Mr. Milliken, if the salary expense category—excuse me. It states that Mr. Neilson would like to see a salary expense category added to the salary classification on the expense detail sheet of the financial statements.

Are those again part of the financial statements we have been talking about? A. I believe so, yes, sir.

Hearing Officer: Can we identify Mr. Neilson?

The Witness: Mr. Neilson was the office man-

ager at Pacolet Manufacturing Company in Pacolet, South Carolina.

Q. (By Mr. Dyer) Now the suggestion that Mr. Neilson is making is to get set up a separate category on the expense detail sheet for salaried personnel for supervisory trainees; is that correct? [1418] A. As I understand this, yes, sir.

* * *

Q. (By Mr. Dyer) Mr. Neilson states he does not feel they should go ahead and break out this new category without all mills being consistent. And I am quoting:

> "As we realize there are certain comparisons made between mills including the photostatic comparisons that you make."

Now, can you tell us what those are? A. Yes, sir, I can? The periodic statements giving the cost analysis on the forms which we have just been discussing are received in New York and some one in New York in accordance with Mr. Flanigan's instructions has the sheets photostated for the cotton mills.

And the cotton mills are then sent the photostats of the other cotton mills so that they can make comparisons of their items of cost. For instance, Mr. Oeland would see he is doing better than somebody else making similar constructions [1419] and not doing as well in another classification.

Q. Well is this merely just for the constructions? Or is it also for, say, salary arrangements, everything right through the whole scheme of the complete financial picture of the individual corporations? A. No. As I understand it, Mr. Dyer, this is just a summary sheet showing the costs going into a yard of cloth, the cost per pounds.

That was in an earlier exhibit. The suggestion was made to add costs per pounds; so much weaving, so much for this, so much for that, raw material costs, labor costs, et cetera.

As I understand it, that is what the form was. It was photostated and distributed to the other cotton mills.

Q. In other words it was just one form and not all the financial statements that were photostated? A. As I understand it, it was just the one form.

Q. Now, if there Mr. Neilson states that Mr. Flanigan made certain comparisons, what would those be? A. Those are the ones I have just been discussing.

Q. Excuse me. I may be wrong. I thought you said that they were photostated and sent to the mills so that the mills might make their own comparisons? A. That is right.

Q. What comparisons does Mr. Flanigan make? A. Including the photostatic comparisons that you made, [1420] the comparisons—let's put it the other way—the photostats, in fact, are made by Mr. Flanigan. I can see that this language is confusing. But to the best of my knowledge neither Mr. Flanigan nor any one else at Deering-Milliken makes comparisons as such. The information is there.

But I am, as Treasurer of Deering-Milliken and Company, not as interested in each item of cost in the production of say, an 80-square print cloth as is Mr. Oeland.

I am, however, very interested in how the Darlington Manufacturing Company is doing in the overall. I don't profess to be a manufacturer, nor does Mr. Flanigan.

* * *

[1422] Q. (By Mr. Dyer) Mr. Milliken, I have handed you a memorandum marked General Counsel's B-27, ad-

dressed to Mr. Oeland from Mr. Turnowski, dated October 28, 1954.

In this memorandum, Mr. Turnowski requests that: "In preparing authorization requests for additions to or replacements of parts of existing units; will you please note the remaining life of the unit to which the addition or replacement is to be applied?"

The second paragraph reads: "This information will save our having to write you. Also expedite the processing of the request."

You now—are these the requests for expenditure of capital for machinery? A. Yes, sir.

[1423] Q. Therefore these requests are processed in New York? A. The information that Mr. Turnowski is requesting here is added information so that when it goes to—when it went to Mr. Roger Milliken for his approval or disapproval on the purchase of this equipment, whatever it could be, for Darlington, the story would be told in full.

Q. I see. Well, at the time was Mr. Roger Milliken's office in New York or in South Carolina? A. No. In 1954 he was in South Carolina, I believe.

Q. Well, let me ask you first: Was this memorandum sent to other mills selling through Deering-Milliken? A. I have no way of knowing. Perhaps the other mills were performing in such a way that Mr. Turnowski felt there was no additional information needed to give the whole story tax-wise to Mr. Roger Milliken.

Q. The reason I ask this is that in looking at the date to and from it would appear that this would be a carbon copy addressed to Mr. Oeland since there seems to be a difference in the typing. A. It is perfectly conceivable that your assumption is correct. But I do not know.

Q. All right.

Well, at the time that a mill requests authorization for capital expenditure, who receives these requests for authorization? [1424] A. Well ultimately Mr. Roger Milliken. But as I explained to you—at least I hope I explained to you this morning—as regards the tax handling, Mr. Turnowski gave the benefit of his experience to the proper allocation of certain items.

* * *

Q. (By Mr. Dyer) For items which a mill wishes to buy, which it eventually expenses rather than capitalize, does the mill similarly make out a request for authorization to purchase such equipment? A. I believe not, as I understand your question, sir.

The Treasurer of the mill is the executive head of the mill and as such he operates the mill. If he needs supplies or other items of expense, he certainly does not turn to Roger Milliken to get authorization to make such purchases.

[1425] Q. I understand it in regard to supplies. A. I believe the same holds on other items of expense.

* * *

Q. (By Mr. Dyer) Mr. Milliken, I have handed you a 3-page memorandum dated September 5 1956 marked for identification General Counsel's B-28, addressed to Mill Office Managers from E. S. Flanigan: Subject: Merchandise Dispute Chargebacks."

* * *

[1426] Q. Now, in the first paragraph, there is a reference to a memorandum from you, sir, to Mill Treasurers under date of July 27, 1956; which according to this described a change in practice with respect to chargeback to mills of the billings which became the subject of merchandise disputes. Can you give us a brief background on what that is about? A. I hope it shall be brief.

One of the things that I, as Treasurer of Deering-Milliken do, is to review weekly with Mr. Smith, who is the vice president in charge of the credit department, the overdue accounts receivable from our customers. In a number of instances prior to July of 1956 there were long overdue payments on certain customers. And I was advised that these were as a result of merchandise disputes: that the Quality Control Department—let's say the greige goods department—had not resolved with the mill and the customer. Nothing had [1427] been resolved.

Hence, the customer was overdue in paying us.

It seemed to me that one way that might expedite the resolution of merchandise disputes between the mill and the customer is to have the mill know. And a telling way of knowing is if there is a dollar or two involved on their books.

So I informally spoke to all the mill Treasurers and explained my philosophy on this; namely, that if a chargeback from Deering-Milliken went to Darlington, for example, Mr. Oeland and his organization would be certainly as keenly aware, and I hope more keenly aware, that the resolution of the dispute should be made promptly.

And parenthetically I add that it has been my experience that if resolutions and agreements are reached quickly, the mill is inclined to fare better than if many weeks or months elapse.

If at the time, the resolution of the dispute is made in favor of the mill and hence contrary to the customer, the credit would again be made to the account of the mill on Deering-Milliken's books as of the date of the chargeback.

And this memorandum is an accounting procedure, and it goes into some detail as to how Deering-Milliken is handling it on its books and what it means on the books, how it

recommends it should be handled on the mill's books so they shall [1428] be the same, one offsetting the other.

* * * *

Q. (By Mr. Dyer) Do you know of any mills that did not adopt this procedure, Mr. Milliken? A. No, I don't know of any that did not. I presume if there had been any questions on whether they did or didn't, [1429] Mr. Flanigan would have discussed it with me.

* * *

[1430] Q. But where the mill treasurer knows that he does not have the money from this account—in other words, he can not count on the money being at Deering-Milliken for the goods which are in dispute—wouldn't that help to resolve—wouldn't that help for him to resolve his difficulties with the customer? A. Well, it would not stimulate the mill treasurer to make an unsound settlement in any sense of the word.

Hearing Officer: Would it help persuade the mill treasurer to—or the mill—to move more promptly?

The Witness: That is correct.

Mr. Dyer: Attempt to get together?

The Witness: Yes. And if it goes to the arbitration and the settlement is resolved in favor of the mill, the credit [1431] is placed as of the date of the chargeback. So after it is all over and the dispute has been resolved in favor of the mill, it has cost the mill nothing in the way of lost interest.

*

[1438] Now, can you tell what the Arthur Andersen Company is? A. It is a firm of independent accountants and auditors.

Q. All right. Does that firm handle all the audits for all of the mills selling through Deering-Milliken? A. At the present time I believe the answer to that is——

A. Hearing Officer: No. He is talking about September 1956.

The Witness: I believe in—yes, sir. In 1956, I believe that was true.

Q. (By Mr. Dyer) Does it also handle the audits of [1439] Deering-Milliken? A. Yes, sir.

* * *

[1444] (By Mr. Dyer) Mr. Milliken, I have handed you two documents stapled together, one labeled General Counsel's B-33, being a memorandum dated February 9, 1955, addressed to Mr. Oeland from E. J. Everitt. And the second, General Counsel's B-34, date February 15, 1955, a letter addressed to Mr. Everitt from Mr. Oeland. A. Yes, sir.

Q. Can you tell us what position Mr. Everitt was holding at this time? A. He was in the order department.

[1445] Q. Which comes under the controller's department? A. Yes, sir.

For the cotton goods.

Q. Now, in the first paragraph on the General Counsel's B-33, Mr. Everitt states that Mr. Roger Milliken suggested that we study the possibility of having our mills apply the bale numbers on a partial release of "bill and hold" goods instead of the present system where the customer applies the bale numbers. A. Yes, sir.

Q. Now, the phrase "our mills" what mills does that refer to? A. The mills selling through Deering-Milliken Company.

* * *

[1453] *Direct Examination* (Resumed)

* * *

Q. (By Mr. Janes) Is the Milliken Family one of the leaders in the textile industry, Mr. Milliken, as you understand it? A. I believe it is so regarded. It is not the easiest question for me in all modesty to answer, sir.

Q. I do not mean to put a difficult question. But I thought it was generally accepted in the Worth Street, Market, if I can refer to that. A. I would think the name Milliken meant a great deal in the Worth Street Market, yes, sir.

Q. And I think you did testify that Mr. Seth N. Milliken [1454] originated and built up the textile, manufacturing and merchandising enterprise of which we have been talking now in the last few days.

Mr. Updike: I do not believe he testified that he developed the manufacturing enterprise. Maybe he did, but I do not believe that is Mr. Minot Milliken's testimony.

Q. (By Mr. Janes) Mr. Milliken, would you subscribe to the statement that appears in GC Exhibit B-13: "In 1865 Seth Milliken started Deering, Milliken Company in Portland, Maine"?

* * * *

Q. (By Mr. Janes) Further, reading from the same page, Mr. Milliken, would you subscribe to this statement: "In 1920 about twenty mills were now associated with Deering, Milliken when Seth Milliken left the great company to the presidency of his son, Gerrish Milliken"? A. Well, I do not know the way in which you are interpreting the word "associated". If you mean twenty mills were as-

sociated with Deering, Milliken as selling agent, I would subscribe completely, yes, sir.

[1455] Q. Mr. Milliken, would you state that generally the majority interest, stock ownership interest, in Deering, Milliken Co., Inc. was owned by members of the Milliken Family? A. Yes, sir.

Q. In the Worth Street Market is the reference "DM Mills" used within your knowledge? Or "Deering, Milliken Mills"? A. A Deering, Milliken Mill?

Q. Mills, plural? A. Yes. Reference is used with some frequency, I believe, sir.

Q. And the reference is made to the various corporations producing products which are sold through Deering, Milliken and Co., Inc.? A. That is correct, as is the case with any number of companies selling for a large group of mills.

* * *

[1456] Q. (By Mr. Janes) The terms "Milliken and the Mills" means what as you understand it?

* * *

[1457] The Witness: I endeavored to answer that.

I understand it to mean Deering, Milliken and the mills for which it sells, or which it represents in the selling markets.

* * *

[1459] Q. You do have in Deering, Milliken and Co., Inc., a merchandising policy, do you not? A. Well, I hope so. Many merchandising policies for many [1460] different types of products.

Q. You have merchandising policies, I should say. That is true, isn't it? A. Yes, to the extent that it is a sales function to have merchandising policies, certainly.

Q. You do have in Deering, Milliken and Co., Inc. financial policies? A. Indeed, yes.

Q. And shall I say credit policies? A. Indeed, yes.

Q. You do have sales policies? A. Yes, sir.

Q. And tax policies? A. As far as Deering, Milliken is concerned? Q. We are talking about Deering, Milliken at the present time. A. Yes, sir.

Q. Insurance policies? A. Yes, sir.

Q. Legal policies? A. Yes, sir.

* * *

[1461] Trial Examiner: The question now is—you have told us that Deering, Milliken has various policies. The question now is whether these policies of Deering, Milliken are communicated to the various mills.

* * *

The Witness: I believe to lesser or greater extent the policies of Deering, Milliken and Company are known to the various mills which Deering, Milliken represents in the selling markets.

Q. (By Mr. Janes) They are known because they have been reported or communicated to the various mills; is that true? A. Well, that is I believe a logical way to get them known.

Trial Examiner: The answer is "Yes"?

The Witness: Yes, sir.

* * *

[1467] Q. (By Mr. Janes) Mr. Milliken, I call your attention to GC B-17. And I ask you whether the purpose of securing the chart on spindle activity was to benefit Deering, Milliken and Co., Inc. directly with its relations to Deering, Milliken customers? A. Definitely in part.

Q. Can we say that that was the primary function? A. Well, it was an important function, yes, sir.

Q. And in addition, would you say that the charts would have the purpose of stimulating activity in—cotton spindle activity, that is—among the various DM Mills? A. The chart reflects the past spindle activity. And to the extent that it reflects it as past excellent performance, it certainly would stimulate continuing excellent performance.

Trial Examiner: You mean you hope it would?

The Witness: That is the hope, yes, Mr. Buchanan. Thank [1468] you, sir.

* * *

Q. (By Mr. Janes) Mr. Milliken, I just want to see whether we could understand that these charts were used for promotional purposes as far as the customers were concerned and also for incentive purposes for future activity in the DM Mills. Is that a fair statement? A. It seems to me it is very much the same question.

Q. Yes. A. It has been answered.

* * *

[1472] Q. (By Mr. Janes) Mr. Milliken, the Exhibit GC-B-13 speaks of team work among the mills. Is that a general characteristic of relationship between the Deering, Milliken and Co. direct [1473] employees and the officers of the Deering, Milliken Mills? A. Well, of course, wherever an opportunity arises to pull in the same direction, we pull in the same direction. Teamwork is very necessary.

* * *

Q. (By Mr. Janes) Mr. Milliken, would you say that the general morale between the Deering, Milliken and Co. heads of departments and the Treasurers and mill managers of the D-M Plants is on a very personal and cooperative basis? A. Yes, sir, I would.

[1474] Q. And that is, I suppose, illustrated by the fact that most letters are on a first name basis?

* * *

Trial Examiner: Now, the question is whether you know of any suggestions by Kable which Mill Treasurers did not accept or adopt?

The Witness: Do I know of any specific suggestions?

[1476] Trial Examiner: Yes.

The Witness: No, I do not know of any at this moment.

* * *

[1478] Q. (By Mr. Janes) In connection with GC B-3, what dividend declarations did you have in mind? A. Year-end.

Q. Of what companies? A. Darlington Manufacuring Company.

Q. Exclusively? A. This letter was from Mr. Oeland, Treasurer of Darlington, addressed to me.

Q. And the information referred to in GC B-3 sought information which was necessary to be processed in connection with the declaration of dividend of Deering, Milliken? A. It was to be reviewed by Mr. Percy W. Phillips, tax attorney in Washington.

Q. In order to determine what? A. Year end dividend declaration.

[1479] Q. Of who? A. Darlington Manufacturing Company.

Q. And did you also have similar information from all of the other DM Mills to be referred to the same source for the same purposes of each of the corporations? A. Well.

I believe that I testified on this subject prior. If you would like me to testify again.

Q. Well, you might, because I don't recall what your answer was. A. I believe that I stated that Mr. Phillips of the firm of Ivins, Phillips and Barker was asked by each mill corporation to review, prior to the end of the fiscal year, the estimated income with a view of looking at it from year end dividend declaration.

Q. Of each of the Corporations of the various DM mills? A. You keep saying of each of the corporations.

Selling through Deering, Milliken and Company, yes.

Q. Was there a declaration of dividends by Deering, Milliken and Co., Inc.? A. Was there, you say?

Q. Yes. A. When?

Q. Well, during the same time? A. Well, the answer is yes, Deering, Milliken and Company has declared dividends for a number of years.

[1480] Q. And was any of the information that you received from the DM Mills used in the determination of the declaration of dividends by Deering, Milliken and Co., Inc.? A. I don't understand your question. I apologize.

Q. Well, in determining the dividend declaration of Deering, Milliken and Co., Inc., did you use any information that you secured from the DM Mills? A. I don't know quite how the dividend of Deering, Milliken and Co. is affected—well, Deering, Milliken and Company's dividend quite naturally is declared on an assumed net after-taxes income of Deering, Milliken and Co.

Q. Your answer is No to my question? A. Well, I don't understand your question. I had hoped that I had answered it by saying what I said.

* * *

Q. (By Mr. Janes) I show you Exhibit GC B-12 and refer you to the sentence that reads: "We have a supply of these books available in New York. They cost considerable

to have printed. But in the interest of having these well distributed to more Mill employees, we would sell these to you at the [1481] very low price of fifteen cents per copy."

Was that the purpose of distribution of the brochure called "Fabric Magic by Milliken" in November, 1955? A. Well, I smile as I give this answer, Mr. Janes. This was November of 1955. The booklet was prepared in the spring of 1952. And I feel certain that a number of people in the mills, as well as across the country, and retailers that had seen copies of this—I feel sure that copies were made available to them. But conceivably Mr. Burchard, who was in charge of it wished to make sure that it was made available to everyone who might be interested.

I don't know whether this letter went to schools or sewing circles or youth organizations or whoever. Perhaps he was very anxious to get it as widely distributed as possible.

Q. Do you think this letter and other letters similar would be addressed to schools and other organizations other than DM Mills? A. I am not saying this letter, no. I am just saying that Mr. Burchard—his job is advertising and hustling, if that word may be used without any sinister connotations.

Q. (By Mr. Janes) Referring to the specific purpose mentioned in that exhibit, Mr. Milliken, can you tell us what [1482] was the objective in getting these brochures in the hands of the mill employees? A. Well, I tried to answer that question. Apparently I haven't answered it to your satisfaction.

Q. I don't believe you have answered it.

Mr. Updike: Please answer it again, Mr. Miliken.

The Witness: The objective in getting this booklet was to expose the number of types of fabrics sold by Deering, Milliken and Company for the various mills.

Q. The purpose mentioned in that exhibit, Mr. Milliken, is that it be distributed to the mill employees. Can you hazard your opinion as to the reason for such a distribution? A. Well, I have just hazarded one opinion, Mr. Janes. That it was to depict, to demonstrate, to portray and reveal the large diversity of fabrics manufactured by the mills selling through Deering, Milliken Co., and to perhaps let the mill employees know that the retailers of America had seen this booklet.

Q. Mr. Milliken, could you please tell us whether the vacation policies existing in the DM Mills are all similar? A. I believe they are dissimilar.

Mr. Updike: Did you say vacation policy or plan?

Mr. Janes: I said policy.

Mr. Updike: I object to the use of the word "policy" in the question. There has been no testimony up to now about [1483] any policy that I know of.

Trial Examiner: I think the witness has answered the question. He said they are dissimilar,

Q. (By Mr. Janes) Mr. Milliken, would you say that the vacation plan in the various DM Mills were similar? A. I am not familiar with the various plans, but I believe the plans in the mills selling through Deering, Milliken are dissimilar.

Q. Who would be informed on this question in Deering, Milliken and Co., Inc. as to the vacation plans? A. Of who?

Q. Of the various DM Mills? A. I don't know that anyone would be. The Mill Treasurers certainly would be acquainted with his own vacation plan.

Q. Could you specify the plants where they are not similar to the vacation plan adopted in other DM plants?

Where do the dissimilarities exist? A. I don't know enough about the vacation plans of any mill, Mr. Janes, to answer your question intelligently.

Q. Well, do you know that there are dissimilarities? A. I believe there are, yes, sir.

Q. Can you tell us what person would be acquainted with that subject so that we may be able to interrogate him? A. Mr. Oeland would be acquainted with the vacation plan at the Darlington Manufacturing Company certainly.

[1484] Q. Is there anybody in Deering, Milliken and Co., Inc. who would be acquainted with the vacation plans of the other mills besides the plant at Darlington? A. I am not sure they would be acquainted with the vacation plan of Darlington.

Trial Examiner: You are not sure that who is acquainted?

The Witness: Anybody in Deering, Milliken Company.

There is no one reporting to me in this end of the business, and no one reporting to anybody else as far as I know in Deering, Milliken and Company who is acquainted with any vacation plan of any mill selling through Deering, Milliken. I believe that to be a true statement.

Q. (By Mr. Janes) Is there a plan called the Deering, Milliken Vacation Plan? A. Yes, there is.

Q. What was that? A. That is for the employees of Deering, Milliken Company.

Q. Exclusively for the New York office? A. For Deering, Milliken Company, whether in New York or in Los Angeles.

Q. I see. And what is the number of employees of Deering, Milliken and Co., Inc.? A. Approximately five hundred and sixty.

* * *

[1492] Q. (By Mr. Janes) Mr. Milliken, I suppose Mr. Roger Milliken in his capacity as head of the various corporations here has made a number of other suggestions, has he not? A. Yes, sir, he has.

Q. I have been emphasizing "suggestion" because it has been playing a large part in this proceeding up to now. Isn't it a fact that the suggestions of Mr. Roger Milliken [1493] are in the nature of something characterized by the expression "your wish is my command"? A. Are you asking me personally, sir?

Q. You are the only one I can ask. A. Well, are you asking in reference to me?

Q. I am asking you as an official—I am asking this question with relation to any of the suggestions that you know of that Mr. Roger Milliken, your cousin, has made as the top official of the various companies. A. Well, Roger Milliken is President of Deering, Milliken and Company, and I can tell you in all candor he has made a number of suggestions to me as to how things might be amended or altered or improved in Deering, Milliken and Company. And I regret it is necessary for me to put it on the record. But not all of those suggestions have been carried out as of this date.

Q. Would you know anything about other suggestions made by Mr. Roger Milliken to others? A. I am on a very close basis with my cousin. I believe I know of a number of suggestions that he has made to a number of mill treasurers where the same answer could be given.

Q. Would you say that these suggestions that were not adopted did not relate to basic policies of the company involved? A. Policies are determined by the Boards of Directors. And [1494] I know that Roger Milliken has on numerous occasions spoken to me personally about things that have not been carried out at Deering, Milliken and has made reference to other occasions where he has

made suggestions at the mill. And the suggestions have not been forthcoming—the results have not been forthcoming.

Q. Could you specify one? A. Well, yu mean in connection with me?

Q. In connection with something that you know. Not necessarily in connection with you. A. Well, if it is relevant to the—well, I will be glad to.

Mr. Roger Milliken has for some time discussed with me a change in functions of certain of the people in Deering, Milliken and Company. And that has not been implemented as yet.

Q. Well, isn't that in the nature of a discussion on a particular problem rather than a suggestion as coming from a top official? A. We certainly have discussed the suggestion. One thing I have in mind is that I do not elect, until requested to by Mr. Buchanan, to put it on the record. Mr. Roger Milliken is of the same view that he held originally. And we do not disagree in large measure. But at the moment it has not yet been done.

Q. In order that we may talk concretely about something—I have no desire to inquire into that phase and that particular [1495] incident—but can you specify something else that you can talk about, some suggestion made by Mr. Roger Milliken that has not been adopted?

Trial Examiner: Suggestion to whom?

Mr. Janes: Well, to almost anybody. I am asking Mr. Milliken to specify the pereson so that we can talk about something concrete.

The Witness: Well, I would a great deal rather not; I find this a little bit embarrassing.

Q. (By Mr. Janes) I am sorry; I did not mean to embarrass you. I posed the question very guardedly. A. I know that.

Trial Examiner: Perhaps Roger Milliken would feel freer to explain this.

Mr. Janes: I am sure he will. But since we were talking about this phase, I thought we would get it from the front of the room rather than the back of the room.

Trial Examiner: Well, I am sure Mr. Roger Milliken will, at some time, be up here.

Mr. Janes: All right. We will wait until Mr. Roger Milliken gets on the stand.

* * *

[1504] *Cross-Examination*

* * *

[1508] Q. (By Mr. Updike) When Deering, Milliken and Company, as agent for a particular mill, makes a sale of some goods, is this sale the subject of any written agreement? A. Yes, sir, it is.

Q. Is it what might be called a form of agreement? A. Yes, sir. It is a sales note, is the terminology.

Q. And do these forms of agreement vary from, let us say, greige goods to woolen goods? A. Yes, sir, they do.

Q. Do they vary within the fields of greige goods? A. Well, it is, of course—of course, each sales note is Deering, Milliken as agent for a specific mill; but as regards the form of cotton greige goods, I believe they all have the same Worth Street rules and similarly identical.

Q. So that each sales transaction identifies Deering, Milliken and Company as agent, does it? A. Yes, it does.

Q. And the particular mill corporation for which it acts [1509] as agent, does that appear in the contract? A. Yes, it does.

* * *

[1515] Q. Now, Mr. Milliken, I direct your attention to Exhibit B-13, the so-called Fabric Magic Book, and specifi-

cally to a statement at the top of what I believe to be the seventh full paragraph—or rather the seventh full page of the booklet, beginning with the words—or rather headed by the words, "Magic of Mill Integration Assures Control of Quality From Fiber to Fabric."

Do you see what I have been reading? A. Yes, sir.

Q. Now, immediately below and to the right of what I just read appears this statement:

> "So is the textile team with Milliken a group of specialist mills, each expert in some type or phase of textile production and closely integrated to control from start to finish."

[1516] I ask you, Mr. Milliken, with reference to what fabric or group of fabrics that statements appears in Exhibit B-13? A. Worsted fabrics, and particularly is mentioned visa.

Q. And with respect to worsted fabrics, do some of the mill corporations start with the raw material and carry it through to the finished product ready for sale to the cutting up manufacturer? A. That is correct.

Q. And is it in that sense that the term "integration" is used in that statement? A. It is used in that sense, going from the raw material through the yarn, through the woven cloth, through the finishing, and dyeing, to the finished piece of cloth ready for sale to the manufacturer of clothing.

* * *

[1517] Q. And without incorporating your prior testimony now, are you familiar with the procedure at, for example, Iselin-Jefferson and other houses that both factor on the one hand and sell on the other? A. Yes, sir, I believe so.

[1518] Q. Is this a normal and usual practive with such houses as well? A. The chargebacks?

Q. Yes. A. Yes, sir, it is.

Trial Examiner: I am wondering now in the reference to Iselin-Jefferson, is there any hing to show whether they operate as intergrated companies with those for whom they sell?

Mr. Updike: Perhaps this witness answer that question.

Q. (By Mr. Uplike) Do you know whether Iselin-Jefferson either controls or owns stock in some of the mills for whom they sell, or all of them? A. Yes, sir, I do know they own stock in some of the mills. And I also know they sell for some mills in which they own no stock.

* * *

[1519] Q. (By Mr. Updike) Is there, to your knowledge, any policy or set policy at Deering, Milliken with regard to any vacation plans other than its own? A. No, sir, there is not.

* * *

[1522] Q. (By Mr. Updike) What is your recollection, Mr. Milliken, with respect to the participation, if any, prior to that memorandum of Mill Treasurers with Mr. Flanigan or others with regard to the designation of a fiscal year or fiscal period as outlined in that memorandum? A. Well, my recollection is that the Boards of Directors of the mills, prior to this date, had determined that the fiscal year end should be the Sunday nearest November 30th.

Q. Does that have any relationship to a traditional basis of accounting in the textile field that is based on a certain number of weeks? A. Yes, sir.

It is very much easier, as I understand it, for the mill to have a year-end on a Sunday rather than a calendar month end for the purposes of inventory taking over the weekend with the auditors rather than during the middle of the week where it is very difficult to stop one fiscal year and start another fiscal year with the plant in full operation.

* * *

[1524] Q. My question to you is whether antecedent to the sending out of Exhibit B-19 there had been any conferring or consultation with the treasurers of the mill corporations with respect to this subject matter? A. Yes, sir, I believe it is implicit in the memorandum itself.

Q. So that B-19 is a confirmation to the persons named of a decision reached with the mill treasurers? A. That is correct.

* * *

[1527] Q. (By Mr. Updike) Do you know from your present position how long Deering, Milliken has not only been engaged in selling but in factoring? A. I believe 93 years.

Q. For how long—for the full extent of the selling opera- [1528] tions? A. Yes, sir.

Q. Now, within your term as Vice President and Treasurer, have you come in contact with others in the factoring business? A. Yes, sir, with some frequency.

Q. Have you in the course of that sort of contact acquired a general knowledge with respect to the practices of others in the factoring business? A. I believe so, yes, sir.

Q. I think it was you who referred to it as a pseudo-banking business. A. I believe I did.

Q. Will you tell us more specifically what is meant by the term "pseudo-banking business"? A. The factoring relationship with a mill or any other customer is basically a financial one. The undertaking of the responsibility of collecting the accounts receivable of the mills, the occasional financing or making financial assistance available to the mills or other customers, the interchange and free flow of information to and from the factor and his clients as regards such matters as, as we have discussed earlier, accounting or taxes or other related subjects.

I used the term pseudo-banking in that I think it is a close parallel between a company and a banker, particularly [1529] a banker who is close to the customer and with whom the customer is anxious to cooperate freely.

That was my reference when I used the term "pseudo-banking relationship."

Q. Now, to the extent that a factor lends money, collects money, and collects money on behalf of its clients, there is a similarity. Is that what I understand your testimony to be? A. A similarity between the factor and a bank?

Q. Yes. A. Yes, sir.

I think there is a very close relationship between a bank and his customer and a factor and his customer. I am drawing a parallel.

Q. Do factors who also act as selling agents work with their customers with respect to mill modernization? A. Certainly.

Q. Do they work with them with respect to operational problems and improvement in efficiencies? A. To whatever extent they can, yes.

Q. What can you say about the fabric planning or styling? A. Well, I know of no selling agency that does not contribute to the styling and fabric development of the mills for which it is selling.

It is, after all, the styling—well, much of it has [1530] to be initiated in the markets, because it is geared to the desires of the customers in large measure.

* * *

[1533] (Pending question read by the reporter as follows: "Now, who are the large selling agents and factors that you can think of offhand as you are on the stand?")

Q. (By Mr. Updike) In addition to Iselin-Jefferson? A. That is companies who are both, you mean?

Q. Yes. A. The first that comes to mind is Cannon Mills.

Q. Now, with reference to Cannon Mills and with particular reference to the Trial Examiner's observations of a few moments ago, do you know as a fact whether Cannon Mills sells and factors for mills in which it owns little or no stock? A. Yes, sir, I do know that.

Mr. Janes: What is that answer?

The Witness: Yes, sir, I do know that.

Q. (By Mr. Updike) Now, what would be another one on the list?

Is M. Lowenstein one? A. M. Lowenstein?

Q. Yes. A. I do not know whether or not M. Lowenstein is one or not.

You are asking the question of selling agent and factor; is that correct?

Q. Yes. [1534] A. Lowenstein is a——

Q. A selling agent? A. Well, actually it factors the accounts. But it is really a unit that operates quite differently than Deering. Milliken, as I understand it.

Q. All right. A. J. P. Stevens and Company has a wholly owned subsidiary, J. P. Maguire, which is a factoring concern.

J. P. Maguire factors the accounts of companies in which J. P. Stevens and J. P. Maguire have no stock interest.

Q. All right.

Are there any others that occur to you? A. Well, there are a number of selling houses that occur to me and a number of factors.

Q. Well, let's take the selling aspects of it then for a moment.

What is Deering, Milliken's charge for selling and factoring together to the mills which it represents? A. It varies depending on what fabric we are talking about.

Q. All right.

Let's take cotton greige goods? A. Print cloth?

Q. Yes. A. Two and a half percent on print cloth.

Q. That is for both selling and factoring? [1535] A. Selling and factoring, yes, sir.

Q. All right.

Now, is that a standard rate so far as you know in the entire industry with respect to the selling and factoring of such goods? A. Yes, sir.

Now, when you say "standard" does that mean there are no exceptions in the industry?

Q. No. I mean generally accepted rate? A. That is the way I understood your question.

The answer is Yes.

Q. Now, without going into detail about it, would the same be true with respect to—would your answer be true with respect to other cotton goods than print cloth goods? A. Yes, sir. Although the percentage might not be and isn't 2½.

Q. I understand that. A. Yes, sir, that is correct.

Q. Similarly, would the answer be the same with respect to fine goods and woolens and worsteds? A. Yes, sir, it would.

Q. Now, in the history of the relations between Deering Milliken and the Darlington Manufacturing Company, has there ever been to your knowledge or to your—or have you any information that any stockholder has ever complained with re- [1536] spect to the rates that were charged

to Darlington when it hired Deering, Milliken and Company as its agent? A. I have never heard of any.

Trial Examiner: Read the question, please.

(Question read.)

Mr. Updike: I should say since Darlington first hired Deering, Milliken and Company as its agent. Is your answer still the same?

The Witness: Yes, sir.

Q. (By Mr. Updike) Now, Mr. Milliken, you are the treasurer of Deering-Milliken and Co., Incorporated, are you not? A. Yes, sir.

Q. And according to some of the testimony that has already been given in this case, the role of the Treasurer in a textile mill corporation is different from the role of the Treasurer in the usual business corporation? A. Yes, sir.

Q. Now, in your role—strike that question.

Speaking in analogy, what comparison would you make to indicate the difference in the respect to their responsibilities? A. Well, in the average American corporation the president is regarded as the chief executive officer, and the Treasurer has responsibilities dealing largely with fiscal matters.

[1537] In the textile industry, I would ally the Treasurer of a textile mill with the President of some other industry or corporation and the President of the Textile Mill with, let us say, the Chairman of the Board. The treasurer in a textile mill, so far as I know, in all of the textile industry is the chief executive officer.

Mr. Updike: The Darlington bylaws, Mr. Buchanan, are already in evidence in this case, and

I submit them again in support of the witness' testimony.

Q. (By Mr. Updike) Now, in relation to this classification that you have just given, Mr. Milliken, the Treasurer of Deering, Milliken and Company, is this the Treasurer in the average corporation sense or in the textile mill corporation sense? A. It is in the average American corporation sense. The chief executive officer of Deering, Milliken and Company is its president.

Trial Examiner: Am I correct in my present understanding that Deering, Milliken's president and Treasurer do not occupy the role of president and treasurer generally in—that they do not occupy the role that a president and treasurer would generally occupy in the textile mill industry?

The Witness: That is correct.

* * *

[1542] Q. (By Mr. Updike) There was one occasion—I do not recall just where it is in the record—where you were asked, Mr. Milliken, with reference to General Counsel's Exhibit B-23, which is a communication from Mr. Hill who, I think, was the Chief Accountant, to Mr. Watford, who was the Accountant for the Darlington Manufacturing Company, with respect to an expense form called Form 3550-DC.

You were asked whether the changes recommended or suggested in this communication from Mr. Hill were, in fact, made at Darlington. And I believe you said you did not know, but you undertook to find out.

I now ask you whether you have found out? A. Yes, I have.

Q. Can you state with reference to this exhibit which I now show you whether these changes were made? [1543] A. They were made in part, Mr. Updike. They were made as this exhibit reflects them, with the exception of one classification here: Pounds Credited to Mill.

Q. And as to that, what happened? A. That is not included on the Darlington Form 3550-DC.

* * *

[1545] Trial Examiner: Suppose we take one at a time. Which one shall we take first? Deering, Milliken Mills?

Mr. Updike: Fine.

Trial Examiner: Have you at any time used the phrase "Deering, Milliken Mills"?

The Witness: I am sure I have, sir.

Trial Examiner: All right.

Q. (By Mr. Updike) And have you heard others use it? A. Yes, sir.

Q. Now, what does that reference embrace? [1546] A. It embraces the mills—it refers to the mills whose products are sold through Deering, Milliken and Company. And in the market—I am talking about on the New York sales market—there are frequent references to Deering, Milliken Mills or Milliken Mills.

Q. Now, have you also either used the term "our mills" or heard that term used in something addressed to you or within your hearing? A. Yes, sir, I have.

Q. Now, to what has that referred? A. On a number of occasions in talking to customers I have used the expression "our mills" or "our mill", referring to the mills selling through Deering, Milliken and Company or in the case of finished goods Milliken Woolens.

Q. Now, in a context where you are talking perhaps with reference to Fine Goods and you say "Our Mills" may the reference in such a context refer not to all of the mills but to the mills which are engaged in the making of fine goods? A. Definitely, yes.

Mr. Updike: Mr. Buchanan, with respect to these—Mr. Schoemer has brought to my attention that Exhibit 13, which is the Fabric Magic Book, uses the term "Mills with Milliken".

Q. (By Mr. Updike) Do you recall the use of that term? A. Yes, sir.

Q. Does that embrace the same area of reference generally speaking? [1547] A. Yes, sir, it does.

Q. Now, are there other situations in relationships with customers where the specific mill corporation or mill itself would be referred to? A. Yes, there are.

Q. Will you give us some illustrations of that, please? A. It was brought out this morning that every sales note which Deering, Milliken and Company renders to the customer, it is on the Form "Deering Milliken as Agent for Darlington Manufacturing Company", for example.

Q. Well, now, in discussions with customers where the customer has been familiar with the product of a particular mill, in such context do the discussions use a different terminology sometimes? A. Yes, with great frequency.

I think almost without exception a customer who purchases, for example, print cloth knows that the Darlington Manufacturing Company has made print cloths for him, for the customer; and the customer would come to the offices of Deering, Milliken and Company and say that he wants to order a given quantity of print cloths, a certain style number, or construction, from Darlington Manufacturing Company.

In fact, there are a number of customers who have gone with our salesmen to various of the mills. And they know them as identifiable mill corporations in the South.

[1548] Q. In other words, it was not uncommon for some of the customers, for example—it was not uncommon for some of the Darlington customers to actually visit the mill? A. Oh, no, I am sure there were a number of customers of Darlington who visited Darlington.

Q. Now, Mr. Milliken, did you, as an officer of Deering, Milliken and Company or in any other capacity, exercise any voice in or control over the labor relations of Darlington Manufacturing Company? A. No, sir.

Q. During the period 1955, 1956, or since then? A. No, sir, I did not.

Q. Did you, as an officer of Deering, Milliken and Company, exercise any control over the quality or quantity, type, or cost of the goods manufactured by the Darlington Manufacturing Company? A. No, sir.

Q. To the extent that you have testified here that Deering, Milliken and Company made recommendations from time to time to Darlington with respect to quality, quantity, type and cost, to your recollection were some of these adopted and some not? A. I feel certain they were.

* * *

[1551] Q. (By Mr. Updike) Mr. Milliken, you became a Director of Darlington, according to the record, in January of 1956? A. Yes, sir.

Q. Did you prior to that time consult with Mr. Oeland or with anybody else with respect to the modernization program at Darlington in any way? A. No, sir.

* * *

Q. (By Mr. Updike) Subsequent to your becoming a Director, did you, Mr. Milliken, in that capacity discuss or consider from time to time the modernization program

at Darlington? A. Well, I believe I was aware in a general way of the modernization program. But I think the minutes will reflect that I did not attend the January meeting of the Board of Directors.

Q. To the extent that the program was then outlined for [1552] carrying out, you did not consider it; is that what I understood your testimony to be? A. Yes, that is right.

Q. Now, to what extent thereafter did you give consideration to the problem? A. Well, I can think of no official consideration that I gave to it at all, Mr. Updike.

Q. All right.

Now, what, if anything, did you, as an officer of Deering, Milliken Company, do with respect to the purchase of raw materials by Darlington? A. Nothing.

Q. Did you do anything in that respect as a Director of Darlington? A. No, sir.

Q. Now, to what extent did Deering, Milliken and Company have a financial or stock interest in the Deering, Milliken Service Corporation?

Mr. Janes: May I have the question read, please?

Trial Examiner: Read the question.

(Pending question read by the reporter.)

The Witness: It had none.

Q. (By Mr. Updike) Were you ever an officer or Director of the Service Corporation? A. No, sir.

Q. To what extent did Deering, Milliken and Company have any financial or stock interest in Deering, Milliken Research [1553] Corporation? A. It did have a stock interest in the Deering, Milliken Research Corporation which was based on the commission income or the value added,

so to speak, to Deering, Milliken and Company of the goods sold by Deering, Milliken and Company.

* * *

Q. (By Mr. Updike) Mr. Milliken, who are the stockholders of the Deering, Milliken Research Corporation? A. I do not know exactly. I mean I don't want to be guilty of error of omission. But I believe the owners of the mill corporations whose products are sold through Deering, Milliken and Milliken Woolens.

Q. Now, will you state just in general to Mr. Buchanan the basis on which this stock ownership is related, each stockholder to each other?

You have given in general the basis of Deering Milliken's. Would you continue with respect to the mill corporations? A. As I understand it, Mr. Buchanan, the total obviously being a hundred percent, the individual mill's ownership is that percentage of the sales volume of a given mill as that percentage relates to the total of the sales volume of the [1554] various corporations, plus the commission income of Deering, Milliken Company resulting from commissions paid to Deering, Milliken by the mills.

* * *

Q. (By Mr. Updike) In other words, Mr. Milliken, this might be stated to be a series of fractions in which the denominator is the total of all of the sales volume in the aggregate plus Deering, Milliken's own gross sales volume, that being the denominator. And the numerator in each instance being the sales of the particular mill corporation or the gross sales of Deering, Milliken and Company itself? A. Yes, sir.

The Witness: Well, would you read that question back again, please?

(Last question read by the reporter.)

The Witness: Yes, the gross sales of Deering-Milliken being the commission, yes.

Q. (By Mr. Updike) Now, during the period 1955 down to date, have you been an officer or director of the Research Corporation? A. No, sir.

Q. What, if anything, have you had to do with the activities of the Research Corporation? [1555] A. Virtually nothing, sir.

Q. What, if anything, during those years did you do with respect to the conditions of employment, the hours of work, the rates of pay, or the fringe benefits of the employees at Darlington? A. Absolutely nothing.

Q. Mr. Milliken, as a consequence of the liquidation of Darlington, and assuming that it was a mill with some forty thousand spindles, what was the result in terms of the total cotton spindles in the mills represented by Deering, Milliken and Company?

What was the effect of the liquidation on that total? A. It was a reduction of spindles obviously.

Q. To the extent of forty thousand spindles approximately? A. No, sir.

Q. Now, during all of this period did the Darlington Manufacturing Company keep its own books of account? A. Yes, sir.

Trial Examiner: Which period?

Mr. Updike: 1955, 1956, and on to date.

Q. (By Mr. Updike) Did I understand you to say they did have their own books of account? A. Yes.

Q. Where were those books kept? A. Darlington, South Carolina, at the mill.

[1556] Q. Was any duplicate of those accounts kept at Deering, Milliken and Company or anywhere else that you have any knowledge of? A. Books of account, no, sir.

Q. Did Darlington have its own stock transfer register? A. Yes, sir.

Q. Where was that kept? A. At the mill in Darlington.

Q. When any questions arose with respect to the transfer of stock on Darlington's books, do you know to whom the problem was referred? A. To the treasurer, I believe, at Darlington.

Q. And if there were any legal problems that were thus raised, do you know to whom they were referred? A. I believe Mr. Oeland, the Treasurer, referred them to the local counsel in Darlington.

Q. So far as you know, as a man experienced in Treasurer's activities are concerned, as you described here, did Darlington throughout this period keep the normal and usual accounts and records of its activities? A. Yes, sir.

Q. At Darlington under the supervision of its Treasurer? A. Yes, sir.

* * *

[1560] Mr. Dyer: I call Mr. Eliot Miller, please.

Whereupon

E. ELIOT MILLER, was called as a witness, and having been first duly sworn, was examined and testified as follows:

[1561] Trial Examiner: What is your full name?

The Witness: E. Eliot Miller.

Trial Examiner: And your address?

The Witness: Woodhollow Road, Roslyn, R. F. D., New York.

Direct Examination

Q. (By Mr. Dyer) Mr. Miller, you were—or you are with Deering, Milliken and Company; is that correct? A. Yes, sir.

Q. Can you tell us what your capacity was in 1956? A. I was the Sales Supervisor for the—in Deering, Milliken Company; I was Sales Supervisor of the goods being sold by Deering, Milliken made at Darlington Manufacturing Company. And I was also a General Salesman for various print cloth and heavy goods fabrics.

* * *

[1563] Q. And if such a customer did come in, you would discuss with him what type of cloth he wished, et cetera, and then I imagine you would note which of the mills would make that type of cloth and write up an order for that mill; is that right? A. I would like to think it were that simple. It is not quite that simple.

[1564] Q. But eventually that is what you would get down to; is that right? A. Yes. But considerable negotiation would take place between Deering, Milliken and the customer and between the Deering, Milliken Sales Department and the particular mill that would be running the cloth or could run the cloth.

In other words, we sell them except by prior agreement—we never actually sell goods in the Deering, Milliken Sales organization without prior agreement with the mills that we are selling for.

* * *

[1574] Trial Examiner: Who would decide that minimum?

The Witness: The mill would have to decide that from the way the looms are laid out in their rooms, and so on. We have no knowledge of that type of thing in the Deering, Milliken Sales Office.

* * *

[1577] Q. (By Mr. Dyer) Mr. Miller, I hand you a document marked General Counsel's Exhibit C-2 for identi-

fication, dated December 23rd, 1955, being addressed to J. M. Oeland from Eliot Miller; and I ask you if you originated this document? A. I did.

Q. The title of the document is "Market Summary."

Now, can you tell us what you mean by a market summary? A. Yes. At the end of each week I would write a summary similar to this of various things occurring throughout the market that might be of interest to Mr. Oeland at Darlington Manufacturing Company. In many cases this information would concern constructions being run at Darlington; and in many cases it would not necessarily.

It could be just general market information of what was occurring on practically any type of fabric that might give him some indication of market conditions.

Q. All right. You say this was done on a weekly basis? A. Yes, sir.

Q. Now, let me call your attention to the third paragraph. In regard to this third paragraph wherein you state that [1578] Riegel—I imagine that is a customer, Riegel Textiles? A. That is correct.

Q. —was interested in a particular construction of cloth that you have not had an opportunity to discuss with you, meaning Mr. Oeland; is that correct? A. You mean is the statement correct?

Q. I am asking when I say—well, let me rephrase the question.

You stated in here that you had not had an opportunity to discuss this particular construction of cloth with Mr. Oeland. And then you go on to state that you feel you could get 17 cents for about five hundred thousand yards first quarter.

The next statement is "Hope you will consider this and discuss with Mr. Sibley."

Now, you can tell us what you meant by the latter statement? A. Yes. To do so I would like to go back to the first sentence.

Q. All right. A. Where I say "Which we still have not had an opportunity to discuss with you."

We don't have the other things here, but I am sure that this type of thing would not have been left holding until the end of the week. So, I am sure we notified Mr. Oeland either by teletype or possibly one of his assistants by telephone if he hadn't been at Darlington at the time the [1579] situation came up.

And that is why we say we have not had an opportunity to discuss it with you. But the last sentence about "Hope you will consider this and discuss with Mr. Sibley"—naturally we, as the selling organization, were hopeful of making a sales of five hundred thousand yards. And the idea of discussing it with Mr. Sibley—Mr. Sibley was the Treasurer of a mill that had run this cloth and similar fabrics to some extent. And it would seem logical that Mr. Oeland could have gotten some assistance or technical help from him on the feasibility of running it.

Q. On the feasibility of running it, and also in regard to the price; is that right? A. I would think not. I don't think that there would have been any conversation between them about the price.

Q. I see. A. I don't know that to be a fact. I don't see why there would have been any. That would be Mr. Oeland's business at Darlington, not somebody else's.

* * *

[1584] Q. (By Mr. Dyer) Now, can you tell us what is meant by stock goods? A. Stock goods are goods that are in stock.

Q. In other words, they are goods that a mill has made which have not been sold yet? A. And they are holding in inventory, yes.

Q. All right. A. At the mill in most cases. At no time do I think Deering, Milliken ever carries any stock. We do not own any stock.

* * *

[1585] Q. (By Mr. Dyer) Mr. Miller, I have now handed you a piece of paper marked for identification as Exhibit GC C-3, being entitled "Market Summary" dated April 6, 1956. Was this prepared by you? A. My copy does not have my signature on it. Oh, yes, it does, very faintly. It was prepared by me, yes.

Q. It has your name at the top along with Mr. Oeland's? A. Yes.

Q. Now, let me direct your attention to the fourth paragraph labeled "Pocketing Twill."

Now, in this fourth paragraph you state "We understand the construction number is a 39 inch 4.50 weight 68x68 pocketing twill."

Under that you state "We understand that this is a very good running number at the mill and that you would be glad to have additional business on the cloth."

[1586] You go on to state "If we can arrange to get clearance from Department 2 and operate in a sensible way in relation to the other pocketing twills being made by the other mills, we will press for additional business."

Now, may I first ask what is Department 2? A. Department 2 is the Heavy Goods we have spoken of: drills, twills and sheetings, cotton goods.

Q. Would Department 1 be Print Cloths? A. Yes, sir.

Q. When you speak of getting clearance from Department 2, what is entailed in that? A. The word "clearance"

is a poor choice of words on my part in writing this summary. Actually, we were getting background.

Normally twills of this nature are not made with print cloth yarns in a print cloth mill. And I, as a sales supervisor, had had no experience in the sale of pocketing twills until this particular one. And we found—after Darlington took the first order and was able to make it satisfactorily and would have liked to have had Deering Milliken's Sales Organization sell more of this cloth, we found the Deering, Milliken Sales Organization might be sticking its neck into a problem where we would be bearing down the prices of pocketing twills by making a cheaper and cheaper pocketing twill.

[1587] So, I was working with a man in Department 2 that was giving me background information on pocketing twills in general.

Q. Do you mean by that making a cheaper and cheaper article that Darlington was underselling the mills selling through Deering, Milliken in making pocketing twills? A. No, sir.

Q. Can you explain what you meant by that? A. This particular cloth, 39 inch 4.50 68x68 is a lighter weight fabric than the traditional pocketing twills that are used in great volume in the market.

Q. Where you speak of operating in a sensible way in relation to the other pocketing twills being made by the other mills, what do you mean by that? A. Such as I have just been speaking of; that we did not want to, in our eagerness to sell goods for Department 1 or goods that could be manufactured at Darlington, do something that would be very short-lived. And we wanted to have the pocketing twills as such continue on a quality basis and that we were learning

that we were maybe delivering something that was not of quite as good quality as the traditional ones.

Q. In other words, other mills selling through Deering, Milliken made pocketing twills of heavier yarns? A. Yes.

Q. And I imagine Deering, Milliken established a reputation [1588] for goods of a certain class in pocketing twills and you were afraid that Darlington might hurt that reputation; is that the idea, by making this lighter weight cloth? A. Yes. But understand that it wouldn't hurt the reputation for the other fabrics that you just mentioned. But it would be entering a sleazier piece of goods into the market that requires quality; into an end-use market that requires quality.

Q. The reputation of Deering, Milliken as a selling agent might suffer if this, as you call it, sleazier material were sold through Deering, Milliken? A. I don't believe that was the point in question, that we were concerned about reputation as much as we were concerned about whether we would have short-lived business on pocketing twills from Darlington. And then we might find ourselves without business.

Trial Examiner: Before you leave that item, Mr. Dyer, I am puzzled by that word "clearance."

Now, the witness has told us that it was a poor choice of words. But I don't—if not "clearance", what was it you thought you should get from Department 2, Mr. Miller?

The Witness: Can I answer that in another way?

None of the personnel in Department 2 would tell me or Darlington Manufacturing Company that

we would not run a 39 inch 4.50 68x68 pocketing twill. That is why I say the [1589] clearance was a poor choice of words.

Trial Examiner: What would you get from Department 2?

The Witness: Market information.

Q. (By Mr. Dyer) Market information in what respect? A. Marketing information as to the pocketing twills that were standard in the market. The general pulse of the market on the traditional pocketing twills, price information, et cetera. You know, going prices.

* * *

[1590] Q. All right. Now, can you tell me approximately how many other mills were making pocketing twills at that time? A. I believe two.

No, wait a minute. Are you talking about individual mills or individual mill corporations?

Q. Corporations. Excuse me. A. Only one.

[1591] Q. All right. A. May I correct that?

To my knowledge only one making pocketing twills of all carded cotton. There may have been mills making pocketing twills and probably were of various synthetic fibers which I have no knowledge of.

Q. No pocketing twills were being made of combed cotton; is that right? A. I hazard a guess No. But I don't know that specifically.

* * *

[1599] Q. (By Mr. Dyer) What process did the salesman go through? You say he scouted around. A. The most obvious thing is that a salesman's bread and butter is in sell-

ing merchandise. So this particular salesman, where he was unable to get the delivery that his customer required, did not want to let a good opportunity pass. So he undoubtedly—and I don't know this to be specific—but I would judge that the pattern would be he would go to the mill sales supervisor of some other mill that he would know from past experience had yarn spinning possibilities, or rather capabilities, within the mechanical limitations, so it would be feasible, in other words. And he would say to this man "I have this opportunity to sell so and so many yards of goods. Would 'X' Mill be able to run it? And would they be interested?" That is undoubtedly what happened. And it worked out this way.

* * *

[1609] Q. (By Mr. Dyer) And a number of the mills were buying new looms? A. Yes.

Q. And where they bought these new looms, would they make similar requests of the Sales Department to find out what they could best make on these looms and the best price they could get? A. Yes, sir.

* * *

[1611] Trial Examiner:

* * *

[1612] Let's begin with this GC C-6 all over again. It is a week resume of the Sales Meeting which was prepared by whom?

Mr. Dyer: By Messrs. A. A. Wright and A. J. May, addressed to all salesmen.

I note that written in pencil are the initials "JOM" which would indicate Mr. Oeland receive a copy of this. Mr. May is Vice President of the Print Cloth Department.

Q. (By Mr. Dyer) Can you tell us who Mr. Wright is? A. He was the Vice President of Deering, Milliken, Inc. in charge of Sales of Department 2, Drills, Twills and Sheetings.

Q. All right.

Now, this is a joint meeting, then, of the men who are in the Print Cloth and in the Heavy Goods? A. Yes, sir.

* * *

[1614] Q. In other words, Darlington wanted to make a decision as to what goods it was going to manufacture on what looms for the next six and a half months? A. Yes.

Q. And they were seeking the advice of the Sales Department as to what would be best for them to run for the next six months? A. The advice, and more importantly, if possible, firm propositions for the business.

* * *

[1618] Q. (By Mr. Dyer) Mr. Miller, did the personnel, for instance, Mr. Oeland, visit the New York Sales Office on frequent occasions? A. On occasion, yes, Mr. Oeland specifically did.

When I say "frequent", I don't——

Q. Well, was it on a regular basis? A. No, not by any pre-determined schedule.

Q. How often would he come to the New York Office? A. Well, I would say over a year's time it would average maybe once in six or seven weeks.

Q. I see. Did any other personnel from Darlington come to the New York Sales Office? A. On a regular basis like that, no. On an occasional basis, yes.

Q. Now when Mr. Oeland came to the New York Sales Office, would he discuss the market with you? A. Yes, sir. At length.

Q. And with anyone else? [1619] A. Mr. May, the head of the Print Cloth Department.

Q. And what would the discussions—what would be the topics of the discussions? Just the particular market, or general things at Darlington, or what? A. Both.

Q. Now can you tell us whether personnel from other mills selling through Deering-Milliken also visited the New York Sales Office? A. Yes, sir.

Q. On the same basis that Mr. Oeland did? A. Yes, sir.

Hearing Officer: What do you mean by "the same basis"?

Mr. Dyer: About every six weeks or so.

Did you understand that by my question, that the personnel from the other mills, the treasurers, would visit the New York Sales Office about every six weeks or so?

The Witness: Yes, I understood it. And for the same general purpose.

* * *

[1629] Q. (By Mr. Dyer) Just to make it absolutely clear on the record: when an order is taken from a customer, what happens after that? A. When Deering-Milliken Print Cloth Department takes an order from a customer, it is done after we have previously agreed with the mill on price, delivery and quantity.

Q. All right. A. Deering-Milliken then accepts the order from the customer and usually will confirm almost immediately by teletype or possibly telephone or memorandum to the mill that we have taken such and such business as previously agreed with you—in this case as previously agreed with you, Mr. Oeland—and then the information

we are speaking of here would further be summarized on Thursday afternoon, late in the afternoon, for purposes of having up-to-date information, and no misses for preparation of the following week's Loom and Stock [1630] Report.

Q. In other words, after the preliminary negotiations, Deering-Milliken confirms that the sale about which you have been negotiating has been consummated? A. Yes, sir.

* * *

Q. (By Mr. Dyer) I have handed you a document marked General Counsel's C-8 dated July 7, 1955, being a letter addressed to Mr. A. J. May from J. M. Oeland. Now, in this letter Mr. Oeland states that he has had a call from Mr. Sibley—and I think we have established that Mr. Sibley is the Treasurer at Monarch—is that right? A. Yes, sir.

Q. Stating—— A. There are two Mr. Sibleys. And this one was not specified. But I am sure that it is the Mr. Sibley at Monarch.

Q. All right.

Stating that you, which would mean Mr. May, had asked him to quote on a 112 x 46 poplin similar to the one that we had worked on here, meaning at Darlington.

> "I furnished him all the information I could, and I am forwarding a sample today."

In the second paragraph he goes on to say:

> [1631] "I presume that Mr. Sibley was given an opportunity to quote on this, because it was 44 inches wide. And we do not have any looms that wide."

Now, can you tell us whether Monarch had been making a cloth similar to that or the same construction prior to that time? A. I would first like to call to your attention that at that time of the running of this memorandum, I was not the sales supervisor for Darlington.

Q. Excuse me? I see. A. However, I am somewhat familiar with the subject in hand there.

Now, what was your question? I am sorry.

Q. Can you tell us whether Monarch had run the construction mentioned in this letter? A. I don't think that Monarch had run the identical construction. I think they had run—I know they had run poplins of various constructions.

Q. Therefore, Darlington's Looms were only able to handle up to 40 inch cloth except for the doubled cloth where they could handle up to 81; is that correct? A. That is right.

Q. Therefore they could not handle any cloth between 40 inches and 80 inches? A. Well, there is some slight difference. I think on a 40 inch loom, Darlington could run goods as wide as 41 inches.

[1632] Or a fraction over 40 inches. But wider than that, no.

Q. Therefore, when the call came from the customer about a wider cloth, Mr. Sibley was asked to quote on it; is that the idea; rather than Darlington being asked to quote on it? A. Yes.

Q. And is it customary for the mills selling through Deering-Milliken to pass information back and forth, similar information to what Mr. Oeland says he gave here? A. Well when requested, as in this case, yes.

Q. (By Mr. Dyer) if you know, do the mills in the other categories similar pass such information back and forth between them? A. I would guess so. But I didn't know specifically of any instance. So I hesitate to answer it definitely yes.

Q. All right, thank you.

Mr. Miller, I hand you a memorandum dated November 30, 1955, addressed to Mr. Oeland from you? A. Again at this time I was not the sales supervisor for Darlington.

[1633] Q. November 30, 1955? A. That is right.

Q. Excuse me. I thought you were at that time. A. Can I just check my dates exactly? Because it is confusing.

Q. Yes. A. I recall that now. I was at this time.

Q. All right. Now, can you tell us what the purpose of this memorandum is? A. The purpose was to give information to Mr. Oeland in order to help him avoid some of the pitfalls that somebody else might have found in manufacturing a similar fabric.

Q. In other words, on this 81-inch width this cloth, you state that Gaffney had been having trouble with the cloth splitting down the middle. And you advised—— A. With another cloth.

Q. All right.

With another type of 81-inch width cloth; is that the idea? A. Yes.

Q. And you were advising Mr. Oeland here to consult with Mr. Norton and Mr. Rankin. Are they at Gaffney? A. I think I just suggested to him "it might be well for you to talk with Mr. Norton and Mr. Rankin at Gaffney."

That is the wording of the memorandum.

[1634] Q. All right. To determine what their problems were so he could avoid them; is that right? A. Yes, sir.

* * *

Q. All right. Can you tell us how you came to know that Gaffney had had trouble with that cloth? [1635] A. Well, our sales department is a fairly small department. And most all the salesmen are familiar with practically everything that goes on.

Q. I see. A. As a matter of fact, I don't know specifically, but I would guess that in this instance Mr. May may have further brought it to my attention, specifically brought it to my attention.

* * *

[1640] Q. (By Mr. Dyer) Mr. Miller, I hand you a letter dated August 31, 1955, addressed to Mr. May from Mr. Oeland. It is marked for identification, General Counsel's C-11.

* * *

[1642] Mr. Dyer: In there he mentions some fifty-four inch looms and some—excuse me. Some 28 draper automatic 54-inch looms and some X-2 looms, and 56 48-inch looms.

Mr. Oeland goes on to say "I am considering the possibility of installing some of these looms at Darlington. This is all preliminary and I have not said anything to Mr. Milliken about it. I am merely thinking out loud. I would [1643] appreciate your help and advice on whether we could properly style up these looms and which width to consider."

He states that "they are both a trifle odd size."

And he asks for Mr. May to give some thought to the matter and write concerning Mr. May's feeling about styling this type of loom with Darlington's present range of yarn numbers.

He finishes up by stating, "Having lost several styles to other mills because customers wanted a wider width has made me realize we should consider some looms wider than 40 inches here at Darlington."

Q. (By Mr. Dyer) The example of losing goods because of the wider cloth requirements—would example of that be the one we have mentioned before in the previous exhibit?

Hearing Officer: Well, I think we had testimony to that effect at the earlier hearing didn't we?

Mr. Updike: Yes, sir.

Q. (By Mr. Dyer) What I am getting to is this: In losing some of these to other mills, would that mean other mills selling through Deering-Milliken? A. Not necessarily. It could mean to competition or to other mills in Deering-Milliken or almost anything.

* * *

[1645] Q. (By Mr. Dyer) Mr. Miller in the ordinary correspondence which you see and which you write, are there any phrases which are in ordinary use by either the mills or by you which indicates mills not selling through Deering-Milliken? Do you use any particular form of words or any number of forms of words which would indicate mills not selling through Deering-Milliken? A. That is a very broad question. Because you can be talking about a variety of instances.

Now perhaps I can answer your question in another way. In a specific instance if I were reporting to Mr. Oeland the loss of business for his mill for any one of the variety of reasons, I would undoubtedly specify what mill did get

the business if I knew, by name—specify the mill by name; whether it be a mill selling through Deering-Milliken and Company or whether it be a competitive mill.

* * *

[1646] Hearing Officer: All right, Mr. Dyer.

Q. (By Mr. Dyer) Mr. Miller, I have handed you an exhibit marked for identification, General Counsel's C-12, dated September 7, 1955, addressed to Mr. Oeland from Mr. May.

Would this be the reply to the letter dated August 31st, 1955, General Counsel's C-11? A. Yes. In his first sentence he says it is a reply to that letter.

Q. All right.

Now, in this memorandum, Mr. May makes references to [1647] several styles—or rather to three fabrics currently run at Darlington on 40-inch looms being woven in wider widths on 46-inch looms at Gaffney and Monarch Mills. And he names the particular cloths.

He then goes on to state that these might fit into Darlington's picture, particularly at 112 x 46 poplin rib provided sales could be made for first quarter delivery to the extent of 56 looms over and above the hundred looms now on at Monarch.

He states please check, with Mr. Sibley. And he mentions a price of 31 cents per yard.

Now, would that mean that Mr. Sibley at Monarch had 100 looms running on that particular cloth? A. Yes. In paragraph 4 Mr. May has shown that there are 100 looms on at Monarch.

Q. And what would Mr. Oeland have to check with Mr. Sibley about? A. Again I think this is very similar to

testimony that we covered yesterday. Undoubtedly the most important thing would be for him to check on the manner of manufacturing the goods.

Now in that train of thought I call to your attention the parenthetical word "rib". The basic difference between the 44-inch poplin being run at Monarch on 100 looms to the same cloth run narrower at Darlington was that Darlington was not running a rib poplin. They were running a—they were [1648] running what is known as a broadcloth poplin. And there is considerable difference in market acceptance of it. And I am judging that where Mr. May recommends "please check with Mr. Sibley", that it could very well have to do with such manufacturing technicalities as that fact.

Q. Well, in the paragraph prior to the description of the looms, Mr. May states that there are three fabrics currently run at Darlington on 40-inch looms that are being woven on wider looms. That would seem to indicate that Mr. Oeland at Darlington was running the same goods rather than a different goods; is that correct? A. It would seem to indicate that. But my memory serves me that that is not exactly the case; that there was the difference between a broad cloth poplin and a rib poplin. Both of which are loose terms.

But they serve to describe the difference in appearance of the cloth.

* * *

[1650] Hearing Officer: May I say I am interested, and I thought we were on this before. But before we leave it, I am interested in this phrase "over and above the 100 looms now at Monarch."

The Witness: Do you want me to enlarge on that?

Hearing Officer: Yes. I thought you undertook to answer Mr. Miller. But I don't quite understand it.

The Witness: Well, I think it is necessary to understand the position of a sales department head to properly answer this question.

As head of the Print Cloth Department of Deering-Milliken and Company, Incorporated, Mr. May was responsible to Deering-Milliken to—I was going to say to sell the merchandise from these various mills, but he actually himself was not selling the merchandise; he was——

Hearing Officer: He was responsible for the sales?

The Witness: He was responsible for the sale of this merchandise, yes. One of the most important functions that [1651] a sales manager in such a capacity serves is to forecast sales in order that the mills that Deering-Milliken and Company were selling for could plan their production, which mechanical and technical changes frequently require considerable length of time and great expense.

In this case, Mr. May is, on the one hand, in paragraph No. 4, indicating to Mr. Oeland that Monarch has had some success with this cloth and with selling it through Deering-Milliken; but in paragraph 5, he says that——

Hearing Officer: Now which?

The Witness: Paragraph 5, beginning: "Of these fabrics."

Hearing Officer: Yes.

The Witness: Mr. May says to Mr. Oeland that it would be wise to consider running such a fabric if the sales department, Print Cloth Depart-

ment, of Deering-Milliken were able to sell the production of the 56 looms that Mr. Oeland might be able to assign to such a construction.

Mr. May did not want to have Darlington or any other mill make a lot of cloth that Mr. May would not be able to dispose of through the General Market channels.

Q. (By Mr. Dyer) Well, was that part of the information which he asked Mr. Oeland to check with Mr. Sibley? A. He doesn't specify that. I would imagine that that would come into any discussion the two mill treasurers would have. But that is the type of thing that would be—such [1652] information would be more known in the sales office than in either of the mills in question.

Q. Well, may I suggest this: Would it be possible that Mr. Sibley was planning to put on more looms; and before Darlington should consider buying these wider looms, they should check with Mr. Sibley to see if he was going to increase his production on that particular number?

Mr. Updike: I don't think there is any such inference in this memorandum. I am sure the witness at this point is just guessing as to its significance.

Mr. Dyer: I think there is such an inference.

Mr. Updike: I don't see any such inference at all.

The Witness: I think what he is saying here is that provided sales could be made.

In other words, providing that I, Mr. May, could make sales for first quarter delivery to the extent of your prospective 56 looms over and above the 100 looms' production that I am already responsible for. I think that speaks for itself.

* * *

[1656] Q. (By Mr. Dyer) Mr. Miller, when Darlington decided to purchase new 50-inch looms, in 1956, did you receive requests from Mr. Oeland concerning what styles would be best for these [1657] new looms? A. I don't remember a specific request, but I am sure there were requests, both written and oral.

Q. And did you make suggestions to Mr. Oeland as to what styles would best fit on these new looms? A. I am sure that I did, if not directly to Mr. Oeland, through Mr. May to Mr. Oeland.

Q. All right. A. And probably both Mr. May and I to Mr. Oeland.

Q. In answering his request, did you make a survey of the market to determine what goods would probably go to the wider looms? A. We would make a survey of the market to determine what we as sales people would be able to sell.

* * *

Hearing Officer: Yes.

Q. (By Mr. Dyer) I hand you a document marked for identification General Counsel's C-13, dated April 3, 1956, addressed to the Mill Treasurers at Gaffney, Darlington, Monarch and Pacolet from A. J. May: subject, "Tar Spots."

* * *

[1658] Q. All right. Was there a problem at the time mentioned [1659] here in the memorandum in regard to tar spots with the mills enumerated? A. Are you asking was there—are you asking were all the mills enumerated having a tar spot problem?

Q. All of them or most of them or some of them. Were they having tar spot problems at that time?

A. This memorandum specifies that Monarch had a particular complaint on hand. I don't know that any of the other mills had any specific problem at that time. But it is the kind of thing that can pop up any time in any mill.

Q. Do you know whether Darlington was having any troubles at that time? A. I believe sir, not.

Q. Now in the next to the last paragraph, Mr. May states: "It is possible that this tar spot situation might get worse and that Deering-Milliken could effect a tremendous loss, especially if there is a decline in the market."

Now, that would be brought about by a customer's refusing to take the goods with the tar spots? A. Would what be brought about?

Q. The tremendous loss referred to? A. That could mean tremendous loss of good will if we had—if Deering-Milliken had serious complaints from top-rated customers.

Q. It could also mean tremendous loss of money, could it [1660] not? A. As a result of loss of sales, loss of potential sales, yes.

* * *

[1668] Q. (By Mr. Dyer) Mr. Miller, I have handed you an exhibit marked for identification, General Counsel's C-14, dated August 1, 1956, addressed to Mr. Oeland from Mr. May.

I see that a copy of it was received by you? A. Yes, sir.

* * *

[1670] Hearing Officer: I think this would be helpful. I think the witness is telling us, Mr. Dyer, that in this memorandum, Mr. May suggested to Oeland that Darlington produce a certain construction—is that the right word?——

The Witness: Yes, sir.

Hearing Officer: —so that Deering-Milliken could sell that along with Monarch's similar construction, Monarch's, however, being of premium quality.

The Witness: That is the suggestion, yes.

Q. (By Mr. Dyer) Well, is it the suggestion that Darlington's would not be a premium quality? A. In a sense, yes. But you have to understand that premium is not only due to graduation of quality, but is due to acceptability in the market.

Strangely enough, again talking about the vagaries of the greige goods, the cotton greige goods market, some customers will—or some customers do at the present time [1671] accept certain makes of 39-inch 4 yard 80 square as premium make fabrics. And yet everybody having any technical information in the market knows that there are other makes that quality-wise are actually better.

Q. Well, was the quality of Darlington on making this 80 square to be commensurate with that of Monarch? A. Roughly so, yes. I think that that is a very difficult comparison to make, because there are numerous manufacturing differences between any two mills that would create differences—for instance, most weavers claim that they can identify a piece of cloth made in their mills just by looking at it. If they had a hundred pieces of cloth thrown at them a weaver can identify his cloth.

Q. Monarch is a carded mill, is that right? A. Yes, sir.

Q. And this Monarch was also carded? A. Yes, sir.

Q. At the time this memorandum was written, when Mr. May refers to "which we are endeavoring to put in the premium class and ask commensurate prices", would that be by way of advertising that they were endeavoring to put it

in the premium class? A. No, sir. At Deering-Milliken we don't advertise any of our greige goods, any of our cotton greige goods.

Q. Let me ask, then: Would it be by salesmanship that you [1672] were endeavoring to put it in the premium class? A. Yes, sir.

Q. I am trying to differentiate in that we are not trying to change the mill's quality of it in any way. A. Deering-Milliken was not trying to change the quality of the cloth.

Q. That is right.

And Darlington's by salesmanship could also presumably be put in the premium class? A. Conceivably, yes.

* * *

[1673] Hearing Officer: Let me ask what or who determines whether a given construction will be put into a premium class?

The Witness: I think to say that it can be determined would be wishful thinking on anybody's part. I think that actual establishment of the fact occurs when the market for such fabrics actually accepts a fabric as a premium fabric.

Hearing Officer: Well, I thought you had just told us that conceivably Darlington's production could be put into premium class by salesmanship?

The Witness: Conceivably, yes.

Hearing Officer: You mean if the salesmanship is successful?

The Witness: That is right.

Hearing Officer: Well I was wondering whether there is a predetermined effort to put one thing into a premium class and into another—one mill's con-

struction into a premium class and not another mill's construction.

The Witness: I think that would be just a question of practicality. I don't think that—I don't know quite how you could do it otherwise, other than by stressing your efforts in one direction rather than another.

For instance, an individual would have to stress his efforts in one direction.

* * *

[1675] Hearing Officer: Yes. I would have guessed at something like this. But the witness had previously told us Mr. Updike that conceivably salesmanship might determine whether a given construction was premium.

Mr. Updike: I understand that. What I think he means is that some portion of Darlington's production, because it had better cotton, or longer staple, or what not, might have been sold as premium because that particular run was good; it would meet the market standards for premium. Even though it was not aimed at the premium market by the mill itself.

Am I correct in my understanding?

The Witness: That is correct, yes.

* * *

[1676] Q. (By Mr. Dyer) I may have been mistaken but I think you said some of the standard makes were technically superior to some of the premium makes? A. I say that could be possible, yes.

Q. In other words, the reason for setting up one as premium and one as standard is in connection with the mar-

ket acceptability of the named mill? A. Certain mills have a reputation of making premium cloth all the time, and that determines whether they go into the market as premium cloth; is that right? A. Yes.

Q. I think that is the point I was bringing out about the salesmanship. If the salesman can establish through [1677] salesmanship and through the goods themselves that this is a premium cloth, then that would be generally accepted in the market as a premium cloth?

Mr. Updike: That is a curious set of assumptions. If the salesman can establish with customer "A" that it is a premium cloth, as far as that customer is concerned it is a premium cloth without it seems being accepted by the entire market as a premium cloth.

Mr. Dyer: I grant you that. But once accepted by one, would not the effect travel to others? That is what I am getting at?

The Witness: May I interject to possibly clarify a little further? I may have confused the issue. There are two interpretations of premium. There are premium prices and there are premium qualities.

Now, the small number of makes of premium quality goods that we referred to, three or four mills, are premium quality and generally they get premium prices. But it is conceivable that they could not at certain dull times of the market, or for any number of reasons they might not get a premium price.

On the other hand a sub-standard or a standard make could, due to availability, get a premium price but possibly not premium quality.

I am sorry if I confused it.

[1678] Q. (By Mr. Dyer) In 1956 was Mr. G. H. Boynton with the fabric Development Department? A. Fabric Development?

Q. Yes. A. No, sir.

Q. What department was he with? A. Yarn—I believe it is yarn purchasing. I guess he both purchases and sells yarn. But it was involved with yarn and synthetic staple.

Q. Now, in that capacity, do you know whether he was on the lookout for new types of yarns such as the Colvadur, the high wet strength German staple?

Do you know whether he was? A. Yes.

Q. And when he got that information did he pass it on to the mills with regard to it? A. He would pass it on to the mills selling through Deering-Milliken; and he would in many cases pass information of that sort on to the various sales departments of Deering-Milliken.

Q. All right.

Do you recall, Mr. Miller, in November, 1955 passing on to Mr. Oeland a memorandum in regard to non-woven fabrics? A. Yes, sir, I do.

[1679] A memorandum not written by me?

Q. That is right? A. Yes.

Q. I believe the memorandum itself was written by Charles Clausen, addressed to Roger Milliken; was that right? A. Yes, sir.

Q. Can you tell us what position Mr. Clausen held at that time? A. He was a salesman in Department 2, Drills, Twills and Sheetings, of Deering-Milliken and Company, Incorporated.

Q. All right. A. He may have been a sales supervisor, but I am not just sure of that date. Around that time he was.

Hearing Officer: The witness told us he passed that memorandum on to whom?

Mr. Dyer: The memorandum of Mr. Clausen went to Mr. Milliken.

Q. (By Mr. Dyer) When you become sales supervisor for Darlington you passed this memorandum on to Darlington? A. Yes, sir.

Q. Can you tell us what the idea was for you to pass it on to them? A. What the idea was of my passing that on to Mr. Oeland?

Q. Yes, sir. A. At that time we had very little in the way of formal [1680] market research.

But from time to time various salesmen and/or mills sales supervisors were either assigned specific research tasks or volunteered specific research task.

And in this particular case Mr. Clausen had made quite some lengthy study of the non-woven fabric market. And I think he traveled a good deal—well he went into all phases of non-woven fabrics. And when he prepared his report, he filed it with Mr. Roger Milliken. And it was of considerable interest to the various sales departments of Deering-Milliken due to the fact that non-woven fabrics could very easily eat into the woven fabrics that we were selling. And we felt that that would be of interest to Mr. Oeland to read it, to say nothing of being up to date on new technical developments in the market in general.

Q. Was the same memorandum made available to the other mill treasurers selling through Deering-Milliken? A. I don't know that it was sent to all the other mill treasurers of mills selling through Deering-Milliken. But I am sure it would have been available.

If the sales supervisor had wanted to send one to the mill that he was most closely associated with or if any of

the mill treasurers had requested it, I am sure that it would have been available to them.

* * *

[1686] Q. I see. Was a sample room set up at Monarch wherein various finished and greige goods from all the other mills were displayed? From all the other mills selling through Deering-Milliken? A. A room was there that had a number of samples in it. I don't believe it was set up for only that purpose. It seems they used a room that was used for other purposes, and incidentally displayed samples.

Q. Well, were samples displayed from all the other mills selling through Deering-Milliken at the Monarch Sample Room, or whatever you want to term it? A. It is quite possible that some samples from some other mills were displayed. I don't know that all of the mills selling through Deering-Milliken had samples in such a display.

Q. Can you tell us whether requests were made of those mills to provide samples for this room? A. I can't tell you that. I would judge, particularly in the field of finished goods, that requests were made of Deering-Milliken Company Sales Department to try to get finished samples from various customers.

Q. Can you tell us whether a request was made of Darlington to provide some goods for this sample display, I will call it? A. I don't remember specifically. But I would judge that [1687] they were invited.

* * *

[1689] Q. (By Mr. Dyer) Mr. Miller, in 1955, did the sales department have an annual sales meeting? A. Yes.

* * *

[1690] Q. (By Mr. Dyer) In 1955 was the sales meeting just a meeting of the sales personnel exclusively? A. No.

Q. Who else came to the sales meeting? A. The mill treasurers and/or their managers of the various mills which were selling their products through Deering-Milliken and Company.

In some cases various mill treasurers would send technical people, production superintendents, people of that sort. Some of the officers—well not necessarily officers, but maybe some of the Department Heads and possibly officers of Deering-Milliken other than the Department Heads immediately interested in the sales meeting might attend.

Q. Now in 1956 was that type of meeting revised? A. Yes, it was.

Q. And what sort of meeting took its place? A. Well, between the sales meetings of 1955 and 1956, the sales supervisor position came into being. As a result of that in 1956 the sales meetings were put on a more individual basis where in my particular case where I met with Mr. Oeland of Darlington Manufacturing Company and other officers and Department Heads of Deering-Milliken and Company Sales Departments.

[1691] Q. Do you mean that your position as Sales Supervisor was created in 1956? A. In 1955.

Q. When? The later part of 1955? A. I think in October some time.

Q. All right.

I show you Mr. Miller a copy of a memorandum dated August 21, 1956, addressed to Mr. Oeland from Mr. May. The second paragraph states: We are specifically assigning Darlington Manufacturing Company to Wednesday September 26 in the morning. Would appreciate your advice as to whom from your mill you would like to attend with you on this date at 10:00 a.m."

Now were similar times assigned to other mills selling through Deering-Milliken? A. I think you should understand that this in particular—in this particular instance, Mr. May was acting as chairman pro tem of the meetings. And he was trying to get together an agenda—trying to get together individual agendas for the various mills selling through his department of Deering-Milliken; and he was also best trying to arrange for the various mill treasurers—you know, for whatever time would be most convenient to them. And I think in this particular case, he had selected a certain day and a certain time for Mr. Oeland. And he was suggesting it to him.

Q. All right. Now, was Mr. May present at each of the [1692] meetings? A. When you say each of the meetings, can you——

> Hearing Officer: The previous question was, were similar assignments made for meeting to the various other mills?
>
> Mr. Dyer: Yes.
>
> The Witness: I believe so.
>
> Yes, the answer is yes.

Q. (By Mr. Dyer) Was Mr. May attempting to be present at each of the meetings that the various mills came to? A. Yes.

Q. So that was why he would have to set up a roster so that he could be present at all of them; is that the idea? A. Yes. And as he points out here, in addition to the mill supervisor—the sales supervisor and the mill personnel from each of the mills involved, that Mr. May was arranging to have appropriate salesmen in attendance, which he also had to arrange.

* * *

[1694] Q. (By Mr. Dyer) Now, Mr. Miller, when did you first find out that Darlington Manufacturing Company was going to be liquidated? A. I don't know the exact date. But after the meeting of the stockholders, I would judge that it was shortly thereafter. I don't know that it was the day after or maybe two days after. But it was shortly after the meeting of the stockholders.

Q. Well, did you attempt to make plans regarding the liquidation and the necessary arrangements that would have to be made with regard to the orders then on hand at Darlington right after the Director's meeting? A. You say did I attempt to make plans?

Yes, I did. I had to make—you have to make plans as a salesman; or as a sales supervisor, you have to make [1695] plans for various eventualities.

Q. And when did that planning start? That is what I am trying to find out. A. Well I would say that immediately following the information that I got about the first meeting that was held, I, as a sales supervisor——

Hearing Officer: Which first meeting?

The Witness: Which was the Board of Director's meeting?

Is that what you are referring to?

Mr. Dyer: Yes, sir.

Hearing Officer: You mean Darlington's Board of Directors?

The Witness: Yes, sir.

Hearing Officer: All right.

The Witness: Immediately after receipt of the information concerning that meeting, I had to start making some plans.

* * *

[1696] Q. (By Mr. Dyer) Mr. Miller, can you tell us the facts surrounding the memorandum you hold in your

hand? A. After the decision was made prior to this time to liquidate Darlington Manufacturing Company, Mr. Oeland advised me and Mr. May in Deering-Milliken Print Cloth Department that he would not be able to deliver the 140,000 yards of cloth for this particular customer.

* * *

[1697] A. Upon receipt of the information from Mr. Oeland that he would not be able to fulfill the contract obligations, we attempted—which is not covered in this memorandum—we attempted to have the customer relieve Deering-Milliken and Darlington Manufacturing Company of the obligation, which the customer refused to do. And I then contacted, as I say here, through a cloth broker and then through Chicopec Manufacturing Company to have someone take on these contracts, which we were unable to do.

The customer was insistent on delivery and quality and so on. Until finally it was a serious situation where we felt obligated to the customer. And we were able to arrange with Gaffney Manufacturing Company to make a similar cloth, not quite the same, due to, oh, some limitations that Gaffney had. And I am not just sure why there had to be a change in construction. But there was a slight change.

Q. (By Mr. Dyer) Did you conduct the negotiations for all this? A. Yes, I did.

With the exception of negotiations with the customer himself. I did not do that.

Hearing Officer: Is Chicopec a mill that sells through Deering-Milliken?

Mr. Dyer: It is not, as I am informed, no, sir.

Mr. Updike: It is not, no, sir.

[1698] Mr. Dyer: Gaffney is, however?

Hearing Officer: Yes.

Q. (By Mr. Dyer) Now to leave that particular subject for a minute, can you tell us approximately how many—can you tell us what the extent of the orders on hand were for Darlington in September 1956; how far in advance was Darlington sold at that time? A. At what time?

Q. September 1956. A. The mill overall I would judge was probably sold up for about six or seven weeks at the time. However, specific constructions—the production of specific constructions might have been sold up well into the first quarter of 1957. But I can't be that specific without referring to some kind of history on it.

Q. And in regard to the—in regard to the orders that were sold for a future time, which deliveries would have been called for after Darlington had been liquidated, what was done with those orders?

> A. In every instance, Darlington first of all attempted to—Darlington Manufacturing Company attempted to meet the delivery obligations stipulated in the contract. Where they were not able to, as in the case in point of this Exhibit C-19, attempts were made to make delivery from other sources, from other mill sources.

[1699] Q. When you refer to "other mill sources", do you mean other mills that sell through Deering-Milliken? A. In this particular instance, we tried very hard to work with mills other than mills selling through Deering-Milliken and Co., as stated here.

Q. Let me ask you if you first contacted mills selling through Deering-Milliken before contacting mills which don't sell through Deering-Milliken?

Or didn't, rather? A. That is difficult to answer.

I would imagine that if contact was not made directly with mills, with other mills, selling through Deering-Milliken, that I might personally have made contact with other sales supervisors in New York just from the standpoint of gaining information.

Q. Well, can you tell us of all the orders that were on hand at Darlington which Darlington was not able to fulfill, were all of those orders either cancelled in part or filled by other mills selling through Deering-Milliken? A. Yes.

Hearing Officer: Read that question back.

(The question read by reporter.)

Q. (By Mr. Dyer) Were most of the orders that were on hand at Darlington carried out by the other mills or can you give us a percentage of what part of the orders were cancelled? [1700] A. You want the relationship of orders cancelled and orders completed by other mills selling through Deering-Milliken.

Q. Yes.

Mr. Updike: Mr. Dyer, you will recall that you have been all over this ground with Mr. Phillips in its great detail. And you have asked for the production of Mr. Phillips. We propose to cover all of this at that time.

Aren't we just duplicating—I am not sure that this witness can do anymore than wild guesses, whereas, as you know, the actual facts have been worked out. And they have been exhibited to you through the person of Mr. Phillips.

Mr. Dyer: Well, I was not sure that this exact information would be covered through that. I

thought a great part of it was. But since this individual was the sales supervisor for Darlington, I thought he could just answer these questions. I don't intend to pursue it any further than this, sir.

Mr. Updike: Anything he gives you will just be an approximation compared with the exact information.

Mr. Dyer: All right. I will withdraw it.

Mr. Dyer: That is all I have.

Mr. Janes: I have no questions, Mr. Examiner.

* * *

Cross Examination

[1705] Q. (By Mr. Updike) All right. Now just taking two mills within the range of your experience, will you explain to Mr. Buchanan this difference in policy and the application of it, please? A. Using specific mills or just using——

Q. Well, using "A" and "B" if you want to. A. All right.

Mill "A" which might be known by common language as a "free-seller" would be a mill that would sell every yard of cloth they estimate they can produce for the next three months, six months, nine months or maybe even a year ahead of time. I imagine there are some mills that at one time or another might sell their production for more than a year ahead.

I think that would be a little unusual. Whereas, Mill "B" might take an altogether more conservative attitude and sell their production through a selling agent such as Deering-Milliken for very nearby deliveries.

Possibly for only 90 days; possibly only a certain portion of their production for ninety days ahead.

Does that answer your question?

Q. Yes, it does. And in your relationship with the mill treasurer, does the mill treasurer instruct you with respect to his policy in that regard? [1706] A. Very specifically, yes.

Q. Are there—as between those two extremes are there some operations that are long-term on certain constructions and nearby term on others? A. Yes.

Q. Within the group that you have been testifying about as the Print Cloth Mills for whom Deering-Milliken and Company sold, did these variations in policy exist to your knowledge? A. Yes.

* * *

[1709] Q. Mr. Oeland was urged by you, was he not, and by Mr. May as well, to make 80 squares on the new 50-inch width looms that were due to come into Darlington some time in August or September? Do you recall that? A. I don't recall that he was urged specifically to make 80 squares on the new looms that he was planning to buy or that perhaps by that time he had already contracted to buy.

We had suggested a number of different constructions to him for those looms. We had likewise suggested 80 squares to him. But I don't know that we ever had specifically for those new looms.

In other words, it would be his decision to make as to which looms he would make a certain construction on.

Q. Well, whether it was those particular looms or not, is it your recollection that in, say, June or July of 1956 you and Mr. May had been recommending to Mr. Oeland that he make 80 squares? A. Yes, sir.

Q. What did he do with regard to that recommendation? A. Well, I don't recall the exact date, but for various reasons Darlington Manufacturing Company was not able

to [1710] make 80 squares and be able to allow Deering-Milliken Company to sell them competitively. And we had various replies from Mr. Oeland about that.

I remember at least one letter about that. And there may have been more. We also had meetings in person where we discussed the same subject.

* * *

[1714] Q. At any time that you can recall, did either you or in your presence Mr. May, ever tell or instruct Mr. Oeland or Darlington to make any goods either for inventory purposes or otherwise? A. No, sir.

* * *

[1716] Q. Now, who, if you know, conducted the final negotiations with respect to the completion of this unfilled portion of this contract by Gaffney Manufacturing Company? A. Well, by "the final negotiations," I am not clear what you mean?

Q. Well, the final determinations as to the price that was [1717] to be paid to Gaffney for doing it. A. I wasn't present. But it is my understanding that that was done between Mr. Oeland and Mr. Norton of Gaffney Manufacturing Company. Now, I don't know whether it was done by telephone or by correspondence, or what.

* * *

Recross Examination

[1722] Q. (By Mr. Updike) Mr. Miller, you will note in the first paragraph of this letter (GC C-8), Mr. Oeland says to Mr. May that he, Oeland, had a call from Mr. Sibley stating that you, meaning Mr. May, had asked him, Sibley, to quote on 112 x 46 poplin similar to the one "we had worked on here" meaning at Darlington.

Now, Mr. Oeland says he gave Mr. Sibley the answer.

Mr. Dyer: Gave him all the information he could. And "am forwarding a sample."

Pardon the interruption.

Mr. Updike: That is right.

Q. (By Mr. Updike) Now, Mr. Buchanan wants to know first of all to what extent was this a practice within the mills represented by Deering-Milliken to the extent you know about any such practice? A. I really can't answer to what extent it was a practice. I think I can give a little more background to this particular instance. Because the two gentlemen in question, Mr. Oeland and Mr. Sibley—here again this is Mr. Sibley of Monarch Mills we are referring to—we are very close [1723] personal friends and have been for quite a number of years—we had worked together for quite a number of years before Mr. Oeland went to Darlington.

So I would assume that this was somewhat unusual, but not completely unique.

Q. Do you know whether the giving of such information is common in the trade as distinguished from its uniqueness or unusualness as between these two concerns? A. Common in trade, meaning the exchange of information from one competitor to another?

Q. Yes. A. Technical information I would say to a great extent is exchanged.

For instance, we had this question of tar spots a little while ago which there have been great meetings, convocations, if you want to call them, where people have exchanged information.

Now, as far as specific information on a specific cloth, I don't know that that would be readily exchangeable. It doesn't seem practical.

* * *

[1724] CHARLES W. KABLE called as a witness, having been first duly sworn, was examined and testified as follows:

Hearing Officer: State your full name.

The Witness: Charles W. Kable.

Hearing Officer: Where do you live?

The Witness: 86 Brook Street, Garden City, New York.

Direct Examination

Q. (By Mr. Dyer) What is your position with Deering-Milliken? A. I am Assistant and Assistant Treasurer.

Q. And as the Assistant Treasurer, what department do you control at Deering-Milliken? A. I supervise the activities of the tax department of Deering-Milliken and Company.

Q. All right.

And how long have you been with Deering-Milliken and Company?

[1725] A. Since 1942, in January.

Q. Did you have any association with any of the mills selling through Deering-Milliken prior to that time? A. No, sir. I was a certified public accountant specializing in taxation with one of the major firms in New York.

* * *

Q. Could you briefly state for us in general what services your department performs for Deering-Milliken and Company? A. Yes, sir. The Tax Department is responsible for the drafting and preparation——

Mr. Janes: Will you speak up a little?

The Witness:—of all the income and franchise tax [1726] returns.

I should have said Federal and State Income and Franchise Tax Returns of Deering-Milliken.

Mr. Janes: I will have to ask you to speak up a little louder. I can't seem to hear you.

The Witness: Milliken Woolens, Inc.; Redlyn, which is another wholly-owned subsidiary of Deering-Milliken; Minot Mercantile.

Mr. Updike: It wasn't in 1956, was it?

The Witness: Yes, it was in 1956.

Mr. Updike: Very well.

The Witness: Minot Mercantile Corporation, Woodbank Mills, Inc., and Sylvan Corporation.

In addition to that, the management had made available the services of the tax department to all mills sold by Deering-Milliken and Company.

Q. (By Mr. Dyer) On what basis had that been made available? A. It was made on the basis of the proportionate part of the time, the weighted time, of the tax accountants working on all work allocated to each mill over the total of the expenses of the Deering-Milliken Tax Department.

In other words, the actual budgeted expenses of the Deeering-Milliken Tax Department had been divided down on a time basis.

[1727] We did that rather than charge a regular per diem rate because the per diem rate would have involved us in some profit or loss. And we preferred to do it the other way.

Q. All right.

Hearing Officer: Were the charges made to the mills?

The Witness: That is the basis of the charge to

the mills. It is as closely as we can get it. It is an actual cost basis.

Q. (By Mr. Dyer) Now let me see—I may have missed some of that.

In other words the Tax Department takes care of all the Federal, State—— A. Federal income tax returns, state franchise and any other state returns; and in the South Carolina Corporations we also take care of property taxes, which has a combination effective state and local taxation. The State makes assessments which are then communicated to county auditors in South Carolina. You may be familiar with that. I don't know.

Q. No. I don't live in South Carolina. A. In other words it involves both State and Local taxation here in South Carolina.

Q. In doing that, in handling all those materials for all the mills, as well as for the other corporations affiliated directly with Deering-Milliken, do you complete the returns for the different mills, file the returns for them? [1728] A. Yes, sir.

It was for that reason that some years ago along around 1950 when I had been with the organization quite a while that the mill treasurers whom I served on a power of attorney basis up to that time delegated to me certain, shall we say, available offices so that I would have the right to sign returns.

Q. In other words, were you made, say, an assistant treasurer at one mill or an assistant secretary at another mill? A. That is right. It is a very complex pattern. But all mills were involved in that.

Q. And so therefore you are either an assistant treasurer or an assistant secretary or hold some similar function

at all the mills selling through Deering-Milliken? A. Serving without compensation, yes, and with no authority in any matter except the matter of settling tax disputes with Federal and State authorities.

Q. In other words, you would handle—where a return was filed and some question arose either with state or federal authorities, it would be within your power to settle that matter with the federal or state authorities on behalf of the mill? A. It would be within my power but I would never do it without the consent of the mill treasurer, I can assure you.

* * *

[1729] Q. Therefore you did not attend any of the quarterly treasurer's meetings? A. No, sir.

Q. Or any of the Board of Director's meetings of any of the mills? A. No, sir, I am not a director of any of the mills.

* * *

Mr. Dyer: I have had marked for identification a letter addressed to Mr. Kable from Mr. Oeland as General Counsel's D-1, dated January 24, 1955. I now offer it in evidence.

Mr. Updike: No objection.

Hearing Officer: General Counsel's D-1 is received.

(The document above-referred to, heretofore marked General Counsel's D-1 for identification was received in evidence.)

Q. (By Mr. Dyer) Now in regard to this letter, Mr. Kable, this letter has to do with the Deering-Milliken Research Trust [1730] and its incorporation; is that correct? A. That is correct. It was a reorganization.

Q. All right. Can you tell us what you had to do with the reorganization of the Deering-Milliken Research Trust? A. Well, all I had to do with it was to consult with tax counsel, and under his guidance formulate a plan——

Hearing Officer: Under whose guidance?

The Witness: Tax Counsel.

Hearing Officer: Thank you.

The Witness: Mr. Phillips.

Q. (By Mr. Dyer) Of the firm of Ivins, Phillips and Barker in Washington? A. Yes, sir. I worked with Mr. Phillips a great deal, and he was always guiding our efforts in these respects.

I should go back a little bit in this.

When the Deering-Milliken Research Trust was organized as a cooperative research effort in 1945, Mr. Phillips and I attended a series of conferences with representatives of the Treasury Department. At that time the Research Trust was housed in the building in Greenwich, Connecticut, which they owned. And by wisdom after the fact, the men in the Treasury Department saw that the balance sheet of the corporation had a substantial proportion of building and other capital-type assets.

Q. When you say "the corporation", what do you mean? [1731] A. I beg your pardon. I mean the Research Trust had a great proportion of building-type assets. So this led to a negotiation whereby it was determined that they would permit the mills who were contributing to the research effort only to deduct eighty percent of the amounts assessed by the Research Trust which they required on every year.

The 20 percent theoretically went into building and heavy machinery and other things that we used which were capital in character.

Later the Deering-Milliken Research Trust moved to Pendleton, South Carolina. And when it did, it had space made available to it in a building that was being constructed by Excelsior Mills in its finishing plant which was rented to the Deering-Milliken Research Trust.

After that happened, the mills started complaining about the fact that they only got 80 percent of their contributions to research deducted on their returns. And what they were doing was accumulating a non-depreciable asset, if you can visualize this, on the balance sheet for which they got nothing in return.

I mean whatever was used by the Deering-Milliken Research Trust was in the nature of the expenses of operation of a research organization at that time. Yet they were only still getting 80 percent of it because of the previous type of operation.

[1732] That was what triggered this plan.

Now, under the plan we organized a corporation——

Q. When you say "we", who do you mean? A. Mr. Phillips and I worked this up and presented it to the mill treasurers.

This plan has already been passed by the mill treasurers of every mill. And their ownership of every mill, was evidenced by these so-called certificates of beneficial interest, which add up to $14,000.

This is what Darlington Manufacturing Company had as a frozen asset at that time.

What we did——

Mr. Updike: When you say "this" are you referring to the figures in the middle of the exhibit, which General Counsel has marked D-1?

The Witness: Yes, sir. These various items represent 20 percent of contributions made at various times by the Darlington Manufacturing Company to the Deering-Milliken Research Trust which had not been allowed as deductions and which appeared on the balance sheet of the Darlington Manufacturing Company as a frozen asset.

The corporation was organized on the basis of an appraisal made by the Milliken Treasurers in collaboration with Dr. Armitage and the management of the Deering-Milliken Research Trust.

[1733] They determined on the basis of operations as they were at the time this change took place, that 2 percent would be ample for capital.

Therefore they got their money back less one-tenth of the amount of the money which was retained for an equal proportion of the total number of impounded amounts and translated into a capitalization for the Deering-Milliken Research Corporation, the new corporation.

It is a little bit difficult. I hope I have made it plain.

Now there are two other things. This thing is complicated by two other factors here. The Deering-Milliken Research Trust, during this fiscal year 1955, had an extended program under which they were trying to develop certain things which later bore fruit; but they were just spending great amounts of money at that time. They needed additional funds just so they could get through to the end of their next six months or something like that.

So, this is complicated by two other numbers, one of which constitutes a current amount, which is required, and the other immediately after this transaction we had to make an initial assessment to the corporation of $10,060.84.

* * *

Q. (By Mr. Dyer) May I call your attention to one thing.

[1734] Mr. Oeland states here, "We are planning to incorporate with our minutes the plan as outlined in your letter of January 12."

Can you tell us what the plan referred to is?

Mr. Updike: Is that the plan you have just described?

The Witness: The plan which we just discussed and which was approved by the Treasurer of the Mill in advance as holders of these certificates of beneficial interest which represented equity or ownership.

Q. (By Mr. Dyer) Now, in your letter sending the plan to Darlington, you also told them how much money they would have to put out and how much they would receive back; is that right? A. Yes, sir.

* * *

[1735] Q. (By Mr. Dyer) Just to be clear, Mr. Kable, the plan as set up along with the various amounts of money to be received was sent to each one of the mills selling through Deering-Milliken, was it not? A. Yes, sir. It was my duty to get those figures together. They were reviewed by not only Mr. Phillips but Arthur Andersen and Company before they went out to be sure they were correct.

Q. I now direct your attention to General Counsel's D-2. I think you said that Mr. Netter was your assistant? A. Yes, sir.

Q. Now, in this memorandum, Mr. Netter refers—or he states that he is sending back to Mr. Oeland the drafts of the stockholders and two directors' meetings held on January 24, 1955.

> "Please send us a conformed copy of the revised drafts when you have finished them."

Can you tell us the purpose of sending the stockholders' and directors' minutes—the drafts of the stockholders' and treasurers' meetings to your department in the first place, sir?

* * *

A. It was Mr. Oeland's wish. He was the treasurer of the the [1736] mill and I was serving him.

Now, Mr. Oeland was a manufacturer. And Mr. Oeland and one or two others of these treasurers called on me to help him with the drafting of minutes.

Q. Therefore, would you draft— A. Well, I would take the facts as they gave them to me in notation form and place them into minute form.

Q. All right.

And then they would be sent—this indicates that they were sent back to Mr. Oeland for a conformed copy which was to be sent back to your department again; is that right? A. No.

I think he only asked for a copy.

All we wanted was a copy.

Since 1947 or 1948 we have found it so helpful to have a complete record of the minutes that we have requested the treasurers of the various mills to send copies of the minutes

to us so that we can maintain them in the individual tax file of the corporation for reference during preparation of the return for our guidance.

Q. This was done in your absence by Mr. Netter in this case; is that right? A. Yes, sir.

* * *

[1752] Q. Well, would this be part of the normal course of events? Where you have sent a mill a resolution for them to place before the Board of Directors, if they adopt it, would you thereafter send these instructions as to how many copies to prepare, where to sign them, et cetera? A. Yes, I do that, surely.

* * *

[1753] Q. (By Mr. Dyer) With respect to incentive compensation contracts, did you keep copies of the incentive compensation contracts in the New York Office? A. Yes, I kept copies of the incentive compensation contracts for the same purposes as the minutes. They were associated with the current tax return files, so that I could determine whether accruals made on the books were actually proper. I did that regardless of the fact that the books were audited.

* * *

[1764] Q. Mr. Kable, have you also requested of the various mills in 1956 that they send you copies of their by laws? A. At the time this Darlington matter occurred, I found [1765] that I didn't have a copy of the by laws of Darlington Manufacturing Company. It occurred to me that it would be helpful to me to in answering questions that were asked of me by attorneys and others to have available copies of the by laws of the mills represented by the Tax Department.

* * *

Q. I show you a memorandum dated January 27, 1956, addressed to various mill treasurers from you, subject: "By Laws" in which you there request copies of their by laws? A. Well, maybe it was some other problem that came up that brought it to mind. But it certainly was the desire of the attorney to know what the by laws provided in a certain corporation in the way of requirements that he had to meet in connection with any tax problem that might arise.

Q. And did the various corporations send copies of their by laws to you? A. Well, I think so.

Sometimes our follow-up isn't very complete on that. But I believe they did.

Q. And you did keep them there at Deering-Milliken, did you, [1766] or did you forward them to the tax attorney? A. I forwarded the ones with respect to which I had asked questions to the tax attorney with the request that he send them back to me. I hope I have some of them yet.

* * *

[1768] Q. (By Mr. Dyer) Mr. Kable, were you under the group health and insurance plan at Darlington? A. I had a $2000 policy with Darlington Manufacturing Company for which I paid the premium the same as any other employee.

Q. All right. And did you have a similar policy with the other mills where you were Assistant Treasurer or Assistant Secretary? A. Yes, sir, I think so.

Mr. Schoemer: I think actually it is a group life policy.

The Witness: There were limits on the coverage, so that many of them weren't included even.

There was a limitation on the coverage.

Q. (By Mr. Dyer) I am afraid I don't understand. All of the mills selling through Deering-Milliken had group, health and accident insurance plans. What I am asking is: Were you as Assistant Treasurer or Assistant Secretary, whatever your position was with each of those mills, were you covered under such group, health and accident insurance plans? A. Many of them.

Mr. Schoemer: I am sorry, I still think it was Group Life. This describes Group Life.

Hearing Officer: This says Group Life.

Mr. Dyer: Excuse me.

[1769] Q. (By Mr. Dyer) Group Life Plan at each of those mills? A. Yes, sir.

Q. And you were included in each of those?

Mr. Updike: He said some of them.

The Witness: Some of them, yes, sir.

* * *

Q. (By Mr. Dyer) Mr. Kable, is it a fact that all of the plans were under one insured company? There was one insurer which carried all of these plans? A. One insurer, yes, sir.

Q. And therefore, there was a maximum of how much insurance could be carried on any one individual? A. That is correct, sir.

Q. And, therefore, you were not able to carry policies at each of the mills because of the maximum; is that right? A. Yes, sir.

Mr. Dyer: I will withdraw the exhibits.

* * *

[1771] Q. (By Mr. Dyer) In regard to liquidation at Darlington, there were a number of tax papers or forms which you had to prepare for Darlington; is that correct? A. Could you give me an illustration of what you are driving at?

Hearing Officer: Various papers——

The Witness: You mean 966, Federal Forms, that sort of thing?

Mr. Dyer: Yes.

The Witness: Yes, sir. All right.

Hearing Officer: A, B, C, and D.

The Witness: Yes, sir.

Q. (By Mr. Dyer) Those came through? A. Yes, sir.

Q. Were there other papers such as the form liquidation attached to the tax form that would also come through? A. Yes, sir.

Q. And would you look over such a resolution and give your recommendations in regard to the language of it? A. No, sir. That was prepared by tax counsel, you see.

Q. By Mr. Phillips? A. Yes, sir.

* * *

[1772] Mr. Dyer: Mark this General Counsel's D-25.

(The document above-referred to was marked General Counsel's Exhibit D-25 for identification.)

Mr. Dyer: I offer in evidence what has been marked General Counsel's D-25 dated March 21, 1955, addressed to Mr. Oeland from Mr. Kable, subject South Carolina annual License Tax.

I offer this in evidence.

Mr. Updike: No objection.

Hearing Officer: General Counsel's D-25 is received.

(The document above-referred to, heretofore marked General Counsel's D-25 for identification was received in evidence.)

Q. (By Mr. Dyer) Mr. Kable, were copies of this same memorandum sent to the other mills selling through Deering-Milliken? A. Yes. I was just checking.

Hearing Officer: That would be to the South Carolina Mills?

Mr. Dyer: Excuse me. To the other mills selling through Deering-Milliken in South Carolina.

The Witness: Yes, sir.

Q. (By Mr. Dyer) And there you were asking for their annual license tax reports; is that correct? A. Yes, sir.

Q. For what purpose, sir? [1773] A. Pardon me?

Q. For the purpose of what?

Hearing Officer: Why did you ask for them?

The Witness: For the purpose of making a check to see whether there were any taxes being paid that were excessive, in view of the situations of the companies and the provisions of law.

Q. (By Mr. Dyer) I see. A. I didn't ordinarily take those taxes into account. This was just a spot check.

Q. And you received copies from the various mill corporations in South Carolina? A. As I recall it, I did.

Q. And did you check them over? A. Yes, sir.

Q. To see whether they were paying too much or too little? A. That is right.

Q. Not too little. Excuse me. Whether they were paying too much? A. Yes.

Q. For instance, had Darlington during that year paid too much? A. Yes, sir they did.

Q. And were you able to obtain a rebate for that? A. We got a refund, yes, sir.

* * * *

[1774] Mr. Dyer: Mr. Examiner, I now offer in evidence what has been marked General Counsel's D-26, being a memorandum dated June 10, 1955, addressed to Mr. Oeland from Mr. Kable, subject, South Carolina Property Tax, 1955.

Mr. Updike: No objection.

Hearing Officer: General Counsel's D-26 is received.

(The document above-referred to was marked General Counsel's Exhibit D-26 for identification and received in evidence.)

* * *

[1776] Now, in the next couple of words, you talk about your instruction memorandum to you dated some months ago. Can you tell us what the instruction memorandums were? A. Yes. I will have to go back into the history of the negotiations that I conducted with the South Carolina Tax Commission in order to explain it.

Hearing Officer: Well can we say that several months before you had issued an instruction memorandum concerning this?

The Witness: Well, I suppose I had to issue an instruction memorandum because there was a change

in the basis for preparing the returns in that year as opposed to the previous year. That is about as simply as I can state it.

Q. (By Mr. Dyer) And did the instruction memorandum go to all the mills selling through Deering-Milliken in South Carolina? A. Yes. They had asked me to do this for them. So I sent them instructions as to what was required by the State Commission.

* * *

[1786] Mr. Dyer: I now offer in evidence General Counsel's D-28 being a memorandum addressed to Mr. Oeland from you, dated April 17, 1956?

Mr. Updike: No objection.

Hearing Officer: General Counsel's D-28 is received.

(The document above-referred to was marked General Counsel's Exhibit D-28 for identification and received in evidence.)

Mr. Dyer: Mr. Kable, in regard to the memorandum in your hand, this refers to an extension to file South Carolina Property Tax Schedules. Was that extension granted just for Darlington or for all of the mills in South Carolina selling through Deering-Milliken?

[1787] The Witness: It was not granted for all of the mills. But it was granted for all of the mills with respect to which we couldn't file by the due date, which was March 1.

* * *

Q. (By Mr. Dyer) You ask in the latter part of the exhibit for the Mill to forward a copy of the proposed assessment figures to us as soon as possible.

Can you tell us what those figures would be? A. Those figures would be an analysis of the plant, beginning as of the first day of the previous fiscal year [1788] and ending as at the last day of the fiscal year, taking into account all property that came in and all property that was retired.

Breaking the property down according to these productive and non-productive items.

And the implication of the last part of that is what constitutes a productive or non-productive item which was always a matter of borderline consideration. And which I was in a better position due to my contacts with the Tax Commission to evaluate than the people at the mill.

Q. All right.

Does this have reference to what we have determined previously the property records? A. Yes, sir.

Q. In other words the property records were being forwarded from the mill to your office? A. No, not the property records. This was just a statistic indication of the property records.

Q. In other words it was a summation? A. Well, it wasn't a summation either. It was a specialized form which we set up on the basis of productive and non-productive, in and out.

Q. I see.

In other words, the form which you set up was something set up in your Department which you sent to the mills for [1789] them to prepare for you? A. That is correct.

The Mill Treasurers delegated these things to me because of the fact that I knew what was required, and they were not in as good a position to handle it.

Q. Darlington did send in their record—I think they call it the "record of their plant additions and retirements"?

A. That is right, yes, sir. That is all associated with the same thing.

* * *

[1790] Mr. Dyer: I now offer in evidence what has been marked General Counsel's D-29 being a letter addressed to Mr. Kable from Mr. Watford, the Accountant at Darlington, dated August 24, 1956.

Hearing Officer: Any objection?

Mr. Updike: I have no objection, sir.

Hearing Officer: General Counsel's D-29 is received.

(The document above-referred to, heretofore marked General Counsel's D-29 for identification, was received in evidence.)

Q. (By Mr. Dyer) Mr. Kable, in the first sentence, Mr. Watford refers to a meeting held at Judson, last Wednesday. Can you tell us what that meeting was? A. It was a meeting which was organized at the request of the Treasurers and Mr. Milliken for the purpose of considering the lines of demarcation, if we could establish them to the best of our ability between expense and capital items.

And it was based upon my experience in negotiating with the Treasury Department during the past several years to bring everybody up to date if they didn't know what items had been allowed as expense which had not previously been allowed as expense.

Hearing Officer: The experience with whom, did you say?

[1791] Based on your experience with whom?

The Witness: With the United States Treasury Department.

Q. (By Mr. Dyer) Now in this Mr. Watford refers to the fact that he was not able to find schedules for property additions and property retirements for the fiscal years 1950, 1951, 1952, and 1953.

Are those—well, what are the records that he refers to? A. Well, Mr. Turnowski had done some work on Darlington's records.

But my recollection is that we looked—well, Mr. Turnowski had already left at this date. And we searched diligently but we could not find anything in Mr. Turnowski's files relating to Darlington's records. And a lot of work had to be done to bring Darlington's records up to date; because apparently this man who was a new accountant in Darlington Mill, a recent comer into the mill, couldn't find all the basic material he needed to get his property accounts into good shape.

Mr. Updike: This man being Mr. Watford?

The Witness: Mr. Watford, yes.

Q. (By Mr. Dyer) You say a lot of work had to be done. Did the Tax Department help him in doing this work, and in setting up these records which were missing? [1792] A. My recollection is that Mr. Netter went down and did quite a good deal of work with Mr. Watford to pull things together in the property accounts form, subsequent to this.

Q. In doing so was Mr. Netter able to use some of the summation sheets that we were talking about in the previous exhibit?

Mr. Updike: Summation sheets?

Mr. Dyer: Excuse me. Whatever you called them.

Q. (By Mr. Dyer) You referred to them as a "form" which you devised——

Mr. Updike: Statistication sheets I think he said.

Q. (By Mr. Dyer) All right. Statistication sheets? A. Yes, he was able to use them surely because we had them year by year.

Q. And those were used in going back to set up Darlington's records? A. That is correct.

* * *

[1796] Mr. Dyer: I now offer in evidence an undated exhibit from Mr. Kable to quite a number of individuals being marked for identification, General Counsel's D-32, the subject being "South Carolina Information Returns, Current Year."

Mr. Updike: No objection.

Hearing Officer: General Counsel's D-32 is received in evidence.

(The document above-referred to, heretofore marked General Counsel's D-32 for identification, was received in evidence.)

Q. (By Mr. Dyer) Mr. Kable, can you tell us the position of the individuals to whom this memorandum was addressed? A. These were the men who were the office managers, accountants, in the various mills.

Q. I see.

Now in here you are giving information to these gentlemen as to how to—on what paper—is that it?—to prepare the South Carolina information returns? A. This was sent out as a service to the mills and as a service to the South Carolina Tax Commission.

They went on a punch-card system; and they found that if you gave them a paper of too light a weight it wouldn't run through their punch-card machines.

So a lot of our mills sent information on the wrong weight paper, and the machine got all blocked up and didn't work. This is just trying to effect some aid to the South [1797] Carolina Tax Commission and in a mechanical way to our mills by having them order a certain weight of paper.

Q. And you point out what the weight of the paper is to be. And you go on to advise that you are sending a copy of this to Mr. Byrd.

Mr. Byrd is head of purchasing at Deering-Milliken Service Corporation, is that correct? A. Yes, sir.

Q. So that perhaps an economy can be effected by having all the South Carolina mills selling through Deering-Milliken purchase this item in a group through Mr. Byrd; is that right? A. Yes, sir, and also give the South Carolina Commission what they needed in order to be able to run their machines.

Hearing Officer: Who is Mr. Byrd again?

Mr. Dyer: Mr. Byrd is head of the Purchasing Department at Deering-Milliken Service Corporation. We will hear more from Byrd later.

* * *

[1800] Q. Mr. Kable, do you recall giving advice to Mr. Oeland at Darlington whether it would be profitable or not as far as [1801] Darlington is concerned to contribute in advance to the State unemployment insurance account in South Carolina? A. Yes, I do. And it really isn't my field. But it was perfectly apparent. He wrote me a letter. I have a vivid recollection of this.

Somebody he was retaining in Columbia had written him a letter and suggested he might make a payment. I made a simple calculation and demonstrated to him that it wouldn't be profitable for the mill to make the payment.

Q. You sent that information to him? A. Yes.

* * *

Q. Now, the income tax depreciation schedules are prepared by whom, the mills or by you, sir? A. By the mills.

Q. All right. And do they follow a standard form in setting up those? A. Very standard, yes. Because our arrangements with the Internal Revenue Service are that we are to prepare the depreciation schedules for Federal Income Tax in such a way that if they are acceptable—and they usually are acceptable—that they can be placed in a revenue agent's file as part of his working papers.

This arrangement we worked out after years of [1802] experience with the Treasury Department.

And they find our papers acceptable. And it saves them oh, tens of thousands of man hours a year. It is a litle work for us. But it is very much worthwhile from the standpoint of the relations that we have established on behalf of these mills with the Internal Revenue Service.

* * *

Hearing Officer: I realize it is a saving of time to the Treasury Department. But I thought you told us also that the mills reap tax benefits?

The Witness: I think it does that. Any time you can establish a proper relationship with the Treasury Department, [1803] you have gotten on the right side of the fence.

* * *

Q. (By Mr. Dyer) Does your department also keep track of the times that license taxes are due at the South Carolina Mills? A. I beg your pardon?

Q. Does your Department keep track of the dates when license taxes are due for the South Carolina Mills? A. Yes. We just sent out reminders to see that people don't get in arrears about filing those taxes. Usually we don't prepare them.

Hearing Officer: You don't prepare them?

The Witness: Usually we don't prepare license taxes. The occasion we talked about in previous testimony related to a check I was making to see whether they were properly prepared.

* * *

[1804] *Cross-Examination*

Q. (By Mr. Updike) Mr. Kable, I just have two or three questions to ask of you.

The first is: In the course of the performance of the duties to which you have testified here, did you ever have anything to do with the labor relations at Darlington? A. No, sir.

* * *

[1805] Q. (By Mr. Updike) Within the range of your work on behalf of Darlington, did there come a time when the Treasury Department sent engineers to inspect the plant and equipment there? A. Yes, sir. We have had such inspections on two different occasions. In 1948 and 1950.

Hearing Officer: Are you speaking of Darlington now?

The Witness: Yes, sir.

Mr. Updike: Yes, sir.

Q. (By Mr. Updike) Did the Treasury Department also send engineers to some or all of the other plants of corporations selling through Deering-Milliken Company? A. Yes, sir.

* * *

[1806] Q. Now, with respect to each of the returns, Federal Income Tax Returns of Darlington that have been the subject of or referred to in your testimony under questioning by Mr. Dyer, was each of the returns that was drafted by you submitted to an independent public accounting firm for review and for approval? A. Yes, sir.

Q. And on whose instructions was that done? A. Under the instructions of the Treasurer.

Q. Was each one of these returns likewise subject to review by the Tax Counsel that you have identified in your testimony? A. Not in detail, but as to any points of law that might be involved which might be questioned at a later date, so far as we could anticipate them.

Mr. Updike: That is all, Mr. Kable.

Redirect Examination

Q. (By Mr. Dyer) Mr. Kable, were the tax returns for all mills selling through Deering-Milliken sent to the accounting firm after review by your department? [1807] A. No, they weren't sent to the accounting firm. The treasurers of the mills years ago requested that public accountants that did the work for each one of those mills, at the conclusion of their audit and after they had prepared their audit report, permit my organization to use the detailed working papers which they had developed in connection with the audit so that we would have not only the records of the company but all of the public accountant's proposed changes, anything they had done in the way of

adjusting journal entries, any notations they might have about possible tax implications of the transactions, we had the benefit of all that while we prepared these returns, together with the minutes which I told you yesterday we retained, the incentive compensation contracts, and all of these things were recalculated by us, not taken at the public accountant's evaluation.

But we recalculated the amount of incentive compensation on what we deemed to be a proper accrual basis.

We had to agree with the independent certified public accountants before we were finished.

Hearing Officer: After you were finished?

The Witness: Finished with drafting, yes.

Now, when we finished drafting——

Hearing Officer: When you finished drafting what?

The Witness: When we finished drafting, let us say, a federal and state return for Darlington Manufacturing Company [1808] for a year like 1954, I would communicate with Arthur Andersen and Company who would then send over a partner or manager of their tax organization, who would review the work that had been done in preparing the tax return in detail.

We never rested until we were able to get a letter from Arthur Andersen and Company or whoever the certified public accountants were that they had reviewed the returns prepared and felt that it was in order for filing based upon accounting principles which they believed in and the tax principles which we would both agree on.

If we had differences of opinion, we would submit them to tax counsel. So that such a letter could

be—such letters for every year for every return are in our files.

Q. (By Mr. Dyer) And that is for each of the mill corporations selling through Deering-Milliken? A. For each mill corporation. But in this case certainly in the case of Darlington.

* * *

[1810] Q. (By Mr. Janes) Mr. Kable, did any of the Deering-Milliken Mills have a tax department of their own? A. Did who?

Hearing Officer: Any of the Deering-Milliken Mills.

The Witness: Not that I was aware of, no, sir.

* * *

[1813] Mr. Dyer: I call Mr. Paul J. Wilson.

Whereupon, PAUL J. WILSON, JR., called as a witness, having been first duly sworn, was examined and testified as follows:

[1814] Hearing Officer: State your full name.

The Witness: Paul J. Wilson, Jr.

Hearing Officer: Where do you live?

The Witness: 5 University Court, South Orange, New Jersey.

Direct Examination

Q. (By Mr. Dyer) What is your position at Deering-Milliken and Company? A. Insurance Administrator.

Q. And did you have any background with any of the mills selling through Deering-Milliken before you came to Deering-Milliken? A. No, sir.

Q. Your background is solely insurance. Is that correct? I don't mean to say sole, but is your background in insurance? A. Yes.

* * *

Q. And you report to whom, sir? A. Mr. Flanigan.

* * *

[1815] Q. I believe Mr. Minot Milliken stated in his testimony that the insurance department took care of all the insurance policies at Deering-Milliken and Company; is that correct? A. That is correct.

Q. Does the insurance department take care of other policies beyond that? A. Yes, sir.

Q. Those include all of the insurance policies of every type and description for all of the mills selling through Deering-Milliken? A. Yes, sir.

Q. Now, among the types of insurance would be Workmen's Compensation Insurance, is that correct? A. Yes, sir.

Q. Do you have a master policy with Liberty Mutual for [1816] all the Workmen's Compensation Insurance for all the mills selling through D-M? A. Yes, sir.

Q. Now, when I say master policy, I mean in one policy? A. There is one policy for the mills which sell through Deering-Milliken. There is a separate workmen's compensation policy for Deering-Milliken.

* * *

A. Yes.

Q. Now, can you tell us when this master policy for Workmen's Compensation Insurance was first procured from Liberty Mutual? A. I believe it is a progressive—the one in existence at the moment you mean?

Q. The one in existence in 1956. A. Well, that was a one-year policy.

Q. In other words, this isn't—— A. So it became effective on January 1, 1956.

Q. You say it is a one-year policy? A. Yes.

Q. It isn't a self-renewing policy? A. No, sir.

Q. Has the policy been the same for the—has it been the same as long as—has the policy always been with Lib-
[1817] erty Mutual? A. As long as I have been connected with Deering-Milliken it has, yes.

Q. And it is a succeeding one-year policy each year, is that correct? A. That is correct.

Q. Can you tell us how the amounts for the premium on the policy are gotten together? A. The premium is based on anticipated payrolls. That is, the deposit premium. I presume that is what you are referring to.

Q. Yes. A. The premium is based on estimated payrolls forwarded to me by the different insureds under the policy. They submit their estimate for the payrolls for the coming year.

And those payrolls are multiplied by the rate for the individual classification at each of the insured locations by the insurance company.

And they arrive at a deposit rate on that basis.

Q. All right. Now, are there other premiums besides the deposit premium? A. There are subsequent adjustments to that premium based on experience.

Q. When you say "based on experience", you mean based on experience at each of the mills as to the amount
[1818] of claims against workmen's compensation? A. That is correct. First, there is an adjustment. Since the deposit is based on an estimate at the end of the year, the Liberty Mutual Auditor visits each location to accurately determine the final payrolls for the end of the year.

So he makes his first adjustment from an estimate to an actual audit premium.

Q. Now, in order to secure this master policy from the insurance company, are there any particular papers with regard to interest? Well, let me ask this first: What

is the face name on the policy? It is Deering-Milliken and Company? A. No, sir.

Q. What is the face name? A. Cotwool Manufacturing Company.

Q. Is there any particular form or paper which might be necessary to submit in order to secure this master policy regarding the interest held in the various mills? A. As far as I am concerned, no. And as a matter of fact, while I have been with—when I came with Deering-Milliken, there were some 30—25 or whatever the number was—individual policies issued to each of the companies.

And purely by Mutual agreement to save the processing of paper work and the necessity of attaching endorsements to many policies, it was decided to just take one page and list all of the named insureds and put it under one policy.

[1819] We could very easily ask the insurance company to go back and issue 30 or 29 or whatever the number is.

Q. Now, in regard to group health and life insurance is there a master policy with the Provident Life and Accident Insurance Company? A. No, sir.

Q. What is the policy? A. Each of the mills have their individual policy.

* * *

Q. How are premiums collected for the policy? A. The premiums are collected—we have what is called a self-administration program. And the premiums are determined and collected by each individual insured having their own policy.

And for convenience and for premium saving, those checks made payable to the insurance company and the statements of each of these insureds are forwarded to any office where they are merely compiled on an insurance company form to list the total amounts of all locations and submit it at one time.

Q. Does this effect a savings of money? A. Yes, sir.

Q. Of approximately what, $9000 a year? A. Yes, it would be about $9000 a year.

Q. Now, you say there are individual policies. Are [1820] all the policies with the same company? A. Yes, sir.

Q. I think yesterday we had a statement——

Hearing Officer: You mentioned the company before.

The Witness: Provident Life and Accident Insurance Company.

Q. (By Mr. Dyer) I think Mr. Kable mentioned yesterday that there was a clause of some type regarding the gross amount of insurance that one man could—that could be attributable to one man. What does that come under? Is that under the individual policies or what? A. It is a combination of several things. Under the individual policy; under the Insurance Company limit as to what they will write on any one person; and under the South Carolina law.

Q. Now, in regard to this health and life insurance plan, has your office set up a schedule for dates by which the reports on a group health and insurance must be received in your office? A. Yes, We try to receive them as quickly as possible after the end of the accounting period. We have had the insurance company adjust the reporting basis to the same basis on which I believe—I believe it is thirteen 4-week periods or something like that. But the accounts are maintained.

Q. All right. Do you have a master fire policy with [1821] the Factory Insurance Association covering all of the mill corporations and mill villages, et cetera? A. Yes, sir. But that is two separate policies you have men-

tioned. You mentioned the mill properties. The mill properties themselves are under one master or blanket policy.

And for the mill villages there is an individual policy also.

Q. What is the face name of the fire insurance policy? A. The named insured and the loss payee under the fire policy is to Deering-Milliken and each of the individual insureds as included in the declarations, which would be the name of each mill insured under the policy.

Q. (By Mr. Dyer) I am afraid I am a little bit confused on terms.

You included in your answer both the face name and the loss payable clauses. Can we separate those? What is the face name on the policy? A. I can't quote exactly. But I think it mentions something to the effect, "Deering-Milliken and Co., Inc." and it's associated companies as named in the declarations, or something to that effect. And then there is a separate page listing all of the names.

* * *

[1822] Q. Do you have these other types of insurance which are maintained for the various mills: boiler insurance, business interruption insurance, plate glass insurance, liability insurance for motor vehicles, general liability insurance on mill properties, advertiser's liability insurance, Lloyd's Excess Liability Insurance?

Are those some of the types which are maintained for the mills? A. I think you have just about listed all of them.

* * *

[1823] Q. (By Mr. Dyer) Now as to these various types of insurance, is the charge for those various types of insurance made to the mills through the statement issued each four-week period by Deering-Milliken and Company? A. I am not familiar with the procedure and the form that apparently you are exhibiting. But the charges made

through my office is in some manner accounted for through Mr. Flanigan's Department.

* * *

Q. Now, are there other charges made to the mill for the [1824] service the insurance department gives them?

A. A charge of the insurance department as such.

Q. Yes. A. No, sir, not to my knowledge.

* * *

Q. (By Mr. Dyer) What did you do, Mr. Wilson, in regard to stating that the mills should enforce the policy of requiring automobile liability insurance to be carried by individuals where the individuals use their private automobiles for company business? A. If I understood your question, did you say what did I do about enforcing the policy?

Q. Did you send out a statement of some type in regard to the mills enforcing the policy? A. Yes. I recall probably a year or two ago advising the insurance companies my opinion of—

[1825] Hearing Officer: The insurance companies?

The Witness: I am sorry. Rather the insureds, as to what they should do regarding individuals who regularly use their car on company business.

Q. (By Mr. Dyer) What did you tell them? A. I felt they should have sizeable limits of liability, as I recall, much in excess of the requirements of the financial responsibility law.

I felt that they should have those individuals submit insurance certificates as evidence that they do have insurance policies on their automobiles.

And I believe I requested that if the mill notes that any of the individuals submits insurance in the same company that the mill is insured they make note of that so that they can obtain what is known as a Class 2——

Q. Taking Darlington, for example, I believe that during 1955 you urged that Darlington bring its sprinkler system up to date? A. Yes, sir.

Q. Was Darlington's System one that was a bit antiquated? A. From the engineering reports, to go back to your prior question, I do not recall inspecting Darlington premises for that. But referring to the engineering reports regarding Darlington, they probably had the most antiquated and difficult systems for the insurance company to consider reliable in the event of a major fire.

Q. When you say "regarding the engineering reports", what engineering reports do you mean? A. The reports prepared by the factory insurance association representative that visited at Darlington regularly on loss prevention matters.

Q. In regard to this fire sprinkler system at Darlington, did the engineering department at Deering-Milliken Service Corporation inspect Darlington with regard to the fire sprinkler system? A. I believe they did, sir.

Q. Did you receive reports from them with regard to it? A. To the best of my knowledge I did receive reports from [1833] them.

* * *

[1837] Q. (By Mr. Dyer) Mr. Wilson, in regard to this letter, Mr. Oeland states that he is writing to ask you whether changes can be made by us if we decide to increase the hospital benefits charging the additional cost to our employees?

Mr. Updike: "Us" meaning Darlington, I take it?

Mr. Dyer: That is right.

Q. (By Mr. Dyer) He states: "We know that this is an overall group policy and wondered if there were not some of the mills in the D-M Group that gave more liberal benefits along the lines than we do there at Darlington."

Did you give your advice to Mr. Oeland with regard to that matter? A. I am sure I did.

Q. Now, I believe you stated that the policy was not an overall one; is that right? A. Yes.

Q. In other words, Mr. Oeland was mistaken in his interpretation of the policy? A. Oh, I don't know what he means exactly here by this statement.

Q. I think you have stated that the policy was an individual policy at each mill? A. That is correct.

[1838] And Mr. Oeland, you will note, goes on to say that he wonders if there are variances in the policies of other mills.

Q. What I am referring to is that Mr. Oeland does not use the plural; he uses the singular all the way through here—policy, not policies. I was wondering if perhaps he was mistaken in his idea that it was an overall policy. A. Well, he may have been. I can't answer that for him. But the individual policies vary.

* * *

[1839] Q. (By Mr. Dyer) Can you tell us what the Deering-Milliken Safety contest is? A. This is a contest and report of the various mills insured under the compensation policy.

Q. What form does the contest take? A. An annual form based on the frequency of accidents.

Q. In other words, the mill having the least accidents would win the contest; is that the idea? A. Yes.

Q. And this is a report on the standing of the various mills in regard to the contest; is that right? A. Yes.

Q. I believe you stated in the first paragraph "Attached are the mill standings at the end of the second reporting period."

How many reporting periods do you have in the year? A. Four.

Q. Four? A. Yes.

[1840] Q. Now, in order for you to get up this information, does each mill report to you each accident that it has? A. No, sir.

Q. How do you get the information? A. They compile merely a summary very similar to the form that is presented here showing the total number of man hours, the medical accidents, the total accidents, the loss-time accidents, and so forth.

Q. Do they give any details in regard to any of the accidents? A. Sometimes they will make a notation on there, because apparently they use that form also in their own individual safety meetings with the mill to discuss accidents.

Q. Where there are recurring accidents of a particular type, do you ask for information in regard to them? A. Yes, I would if they came to my attention.

Q. Where a mill had a high ratio of accidents, would you ask for information about that? A. I would probably ask the insurance company to see what is wrong, why the high frequency continues.

Q. Well, would you in addition to contact with the insurance company, would you also contact the mill itself? A. I would contact the mill to make certain probably that the mill treasurer is aware of the high frequency of accidents occurring in his mill.

[1841] Q. Now is there any prize given as such in relation to the safety contest? A. Yes. There are numerous awards. Liberty Mutual presents awards when a mill goes so many man hours without a lost-time accident.

Q. Well those are awards presented by the insurance carrier? A. Yes.

Q. Are there any awards or prizes as such given by your insurance department? A. Yes. There is a plaque that is given to the mill in each of these groups that has the lowest lost-time frequency.

Q. You have the mills set up in three groups. Can you give us the general classification of the groups? A. Broadly speaking it was by size.

Q. In other words by number of employees? A. No, sir. By estimated man hours the mill would work.

Q. Oh, I see. In other words would you say the mill has about 750,000 man hours for the first group? A. Well no, sir, I think the insurance company advised, and most national safety contests are grouped on the basis of some comparable basis that will be fair. And I believe the insurance company advised that the mills operating under 500,000 man hours would be group 3, I guess it is; those operating between 500,000 and 1 million would be group 2. Group 1 would be over that. That is their basis for suggesting [1842] the most equitable distribution.

* * *

Q. Do you notify the mills of various things which they can get to help, such as posters or films which are available from other sources? A. Yes.

Q. Now, in 1955 I believe Drayton Mills achieved five million man hours without a lost-time accident. And did you in that connection write to all of the mills suggesting to them [1843] that they send a congratulatory letter to Drayton on their record? A. Yes, I probably told every one I could about that event because it was the best record in the Textile Industry in South Carolina. And I am certain that not only the mills listed on this schedule but any other mill or insurance company that I could, I let them know about that.

Q. In addition to the safety contest did you also have a fire protection safety contest? A. Yes, we had one.

Q. Can you tell us what that is? A. That was the first attempt to stimulate interest in the inspection reports pre-

pared by the factory insurance loss prevention engineer in the way of a contest bulleting or stimulus.

Q. The idea would be the mill who had the least fires would win the contest; is that the idea? A. Yes. Or the least recommendations on the report of the engineer.

Q. And was an award of some type given in regard to this contest? A. Yes, there was an award.

From your department? A. It was from my department and the factory insurance association.

[1844] Q. Jointly, meaning the Board? A. Yes. The award was prepared, drawn, drafted, by the factory insurance association and presented to the mill by their engineer.

* * *

Mr. Dyer: Mark this General Counsel's E-4.

* * *

[1845] Q. (By Mr. Dyer) Now in regard to this exhibit you state that "last November, at the personnel manager's meeting in Gainsville it was agreed we would conduct a safety suggestion [1846] contest."

Was that the personnel manager's meeting that you attended, sir? A. Yes, sir.

Q. And you set out "There is to be a cash award of $300 paid to the three employees who submit the best safety suggestions for each of the mill groups."

Who was to pay out money? A. That came out of the Liberty Mutual experience credit and the premium.

Q. Let me see if I understand you. What do you mean it "came out of the——" A. Well that was paid for by the Workmen's Compensation Insurance.

Q. In other words, did Liberty Mutual have a fund for such contests? A. I am sorry——

Hearing Officer: It was added to the premiums in effect, wasn't it?

The Witness: In effect, yes, sir.

Hearing Officer: The premiums would be returned to the mills and the credit is deducted before the return is made.

Is that correct?

The Witness: That would be correct, yes, sir.

Q. (By Mr. Dyer) You set out general rules and procedures for all mills to follow as closely as possible. And [1847] then you go on to the next two pages and set out the general purpose and how the suggestions are to be handled, et cetera; is that correct? A. Yes, sir.

Q. And as to the mill groupings, were those the same mill groupings that we have seen before, as shown on the second page? A. No, sir.

Q. Who determined these mill groupings? A. Well, one of the facts about this meeting that I attended, the purpose of going was to—was at the request of the personnel managers so that I could have some one or so that I could prepare a program in answer to questions that many of them had regarding compensation insurance.

And to that extent, I arranged for the claims adjuster for the area to attend and address this group for the——

Mr. Updike: You mean the claims adjuster for the insurance company?

The Witness: For the insurance company, yes, sir. The loss-prevention engineer for the entire area to attend.

And the sales representatives from New York to attend.

And one of the suggestions was this safety suggestion contest or by the employees which I then undertook to work out with Liberty Mutual and

prepare the various points here as to how the contest should be conducted.

[1848] It was, I believe, their combined suggestions of the engineer and loss-prevention personnel as to how these groups would be classified. I believe basically Group "A" is cottons; Group "B" is synthetics, and Group "C" is Wools.

Q. I see. A. And to that extent it varied.

Q. The judges for the contest were to be a representative from the industrial engineering department.

Is that of Deering-Milliken Service Corporation? A. Yes, sir.

Q. And from the Engineering Department of Deering-Milliken Service Corporation? A. Well, didn't you ask me that?

Q. I asked you about industrial engineering.

I am looking now at (3) under "A" on page 2. A. Yes, sir.

Q. You say a representative from Industrial Engineering Department, Engineering Department and Liberty Mutual Insurance Company? A. Yes, sir.

Q. Are they, first, representatives from Deering-Milliken Service Corporation? A. Yes, sir.

Q. Now on the third page did you design the notice to be placed on the bulletin board? [1849] A. No, sir.

Q. Can you tell us who designed that? A. To the best of my recollection the Liberty Mutual Sales and Loss Prevention Engineer.

Q. All right. This was designed and sent to each mill; each mill could just fill in their name et cetera? A. Yes.

Q. Did you send this to each of the mills? A. Yes.

Q. Now the Safety Suggestion Contest did go on; is that correct? A. Yes, sir.

Q. In other words you did have the contest? A. Yes.

Q. And as a result you get suggestions from the various mills? A. Yes.

Q. And a decision was made as to the best suggestions for each of the three groups? A. Yes. Not all mills participated, however. They did not accept this suggestion as such. I don't recall which. But I do recall that all of them did not send in and participate.

* * *

[1852] Q. (By Mr. Dyer) This is a copy that was sent directly to Darlington, to Mr. Oeland, one copy to Mr. Oeland, one to Mr. Stallworth and one to Kate MacFarland. But copies of General Counsel's E-4 went to all the mills? A. Yes.

Q. Did all of General Counsel's E-6 go to all the mills? A. Yes.

Q. Can you tell us what the purpose of General Counsel's E-6 is? A. To advise each of the mills of apparently good suggestions as a result of this contest, so that if any appeared appropriate that they might wish to consider or adopt, it would be for their advantage I presume to do so.

Q. In other words, in this memorandum is encompassed the winning suggestions submitted from each of the mills? And you have rephrased them a bit so that no one would be embarrassed—— A. Generally speaking that is so.

Q. And you sent these out to all the mills so that every mill could pick what they wanted from the idea? A. Yes.

* * *

[1854] Mr. Dyer: Mark this General Counsel's E-7.

* * *

[1855] Q. (By Mr. Dyer) Mr. Wilson, this letter is apparently a reply to a letter which you wrote previously to Mr. Oeland; is that correct? A. Yes. And he refers to my letter of January 11.

Q. Now, in this—this is following the liquidation sale at Darlington, the auction at Darlington?

Did your Department service an insurance contract in regard to the mill village houses at Darlington?

In other words, was there a contract, fire contract, on the mill village houses at Darlington? A. It was included with the blanket policy.

Q. And what was the purpose of your letter to Mr. Oeland? A. I wanted to know something about what disposition was to be made of the houses so that I could cancel insurance if the houses had been disposed of in any manner whatsoever.

I wanted to find out what was necessary in the way of protecting a continuing insurance if needed.

Q. Mr. Oeland also makes mention of a Dodge Truck and a car. Did you carry the insurance on those vehicles? A. They were included on a blanket policy by Liberty Mutual.

* * *

[1856] Q. Mr. Wilson, I hand you a document dated December 9, 1955, addressed to Mr. Oeland from you. Can you tell us what the purpose is for this document? [1857] A. To advise Mr. Oeland of his experience as we have calculated it from the reports that he has submitted.

Q. His experience in regard to what, the group insurance? A. Yes.

Q. And in this memorandum to him, did you tell him that he owed some funds to the insurance company? A. Yes. It would appear that way.

Q. In other words, you kept a constant check on the records that were submitted on group insurance to make sure that everything was right up to date? A. We attempted to do so, yes.

* * *

Hearing Officer: This is Respondent's Exhibit E-1.

* * *

[1858] Q. (By Mr. Dyer) Mr. Wilson, in regard to the operation of the group insurance policy of Darlington, when Darlington went into liquidation, can you tell us what was done by your department in regard to the policy?

I will rephrase it. Can you tell us what was done about that policy?

* * *

[1860] Q. (By Mr. Dyer) Can you tell us who decided that that would be the way in which the matter would be resolved? A. Once it was determined that the fund being assigned to Darlington was not in excess of the——

Q. Shall we say "administrative costs"? A. Yes.

—the insurance company advised me that that should be retained in the experience fund of the entire number of mills insured by their company.

Q. I am sorry, I don't follow you.

In other words, who ultimately got the money?

* * *

The Witness: And to date, the insurance company has the money.

* * *

[1862] Mr. Dyer: Mr. Examiner, I have had marked for identification and I now offer in evidence, General Counsel's E-8:

This, I am submitting at the present time more as background information for the next series of questions which I will ask.

This is a memorandum from the purchasing department addressed to Mr. Goodwin who at the time, September 13, 1955, was with—was the production superintendent at Darlington. And Mr. J. M. Jackson, whom I can't identify—Mr. J. M. Jackson I am told is Manager of Gaffney; Mr. J. M. Oeland; Mr. Roger Milliken; Mr. W. A. L. Sibley; and Mr. Marshall Stone.

Mr. Marshall Stone I understand is the Treasurer at Pacolet, from Hal C. Byrd, who is the head of the purchasing department at Deering-Milliken Service Corporation.

Mr. Dyer: And W. A. L. Sibley is Treasurer of Monarch.

[1863] Attached to this exhibit is a memorandum dated September 14 to the same individuals which sets up the flight times. I might explain that this memorandum is in reference to a plane being chartered for certain of these personnel to attend an auction sale of the Lock Wood Duchess Plant in Maine.

Mr. Dyer: I wish to call attention to the last paragraph on the first page which states: "The special executive air insurance carried by Deering-Milliken on the key mill personnel will apply on this

trip, according to Mr. Paul Wilson of our insurance department in New York."

Q. (By Mr. Dyer) Do you recall this, Mr. Wilson? A. Do I recall that memorandum?

Q. Not the memorandum, but the question arising as to the insurance? A. Yes, sir.

Q. Now, is the insurance mentioned in this memorandum that contained in this policy from the indemnity insurance company of North America? A. Yes, sir.

Mr. Dyer: Mr. Examiner, I am told that this policy is part of their records of Deering-Milliken. And rather than offer it in evidence, I would like to describe the insured persons in here.

The policy starts out: "Indemnity Insurance Company [1864] of North America, Philadelphia Stock Company, does hereby insure employees as described in Part 4 herein called 'insured employees' of the Deering-Milliken and Co., Inc., and their affiliates and associates herein called the employer,' whose address is 240 Church Street, New York, New York."

The policy then goes on to describe just what benefits it does carry. And the persons to be insured are set out in Rider No. 1, along with the limits of liability on death, hospital care, and weekly indemnities.

And the classes described—I would like to read them into the record:

Class I—Deering-Milliken and Milliken Woolens.

(A) President; Executive Vice President; Treasurer; Assistant Treasurer; Vice President and

Assistant Secretary; and Vice President, Woolens; Vice President, Fine Goods; Vice President, Fabric Development; Vice President, Print Cloth; Vice President, Drills and Twills.

(B) Other Officers.

(C) Salesmen, Stylists and Technicians.

And then indented:

(1) Earning $25,000 and over basic salary.

(2) Earning $25,000 basic salary.

(3) Branch Office Salesmen.

(D) Administrative Department Heads or Supervisors. I should have said to begin with it was roman numeral I.

[1865] Hearing Officer: Class I?

Mr. Dyer: Yes, sir.

Class II—Deering-Milliken Service Corporation.

(A) Department Managers.

Class III—Deering-Milliken Research Corporation.

(A) President,

(B) Vice President,

(C) Secretary.

Class IV—Mill Personnel.

(A) Vice President, Treasurer or General Manager whose chief operational officer or mill head, and whose basic annual salary is:

(1) $30,000 and over;

(2) Under $30.000.

(B) Secretary, Controller, Assistant Treasurer, Assistant Treasurer, Assistant Secretary, Assistant Controller, whose basic annual salary is:

(1) $15,000 and over;

(2) Under $15,000.

(C) Individuals whose duties are those of plant manager.

(D) Individuals whose duties are those of superintendent.

Mr. Dyer: In clarification I might say that where a salary range is called for, the amounts of liability differ. [1866] There is a higher liability where the salary is, say, blank and over than there is for the salary blank and under.

* * *

Q. (By Mr. Dyer) Now, the annual premium on this policy was paid by Deering-Milliken and Co., Inc.? A. Yes, sir.

* * *

[1867] Q. What I am thinking of is this: Where an insurance company develops a new or different type of insurance, do you look into that and attempt to determine whether it would be beneficial to the mill to have that type of insurance and then if so do you recommend it to the mill? A. Yes, sir.

Q. Now, in addition to the master policies I have mentioned this morning, were there any other master policies

of any type which the mills shared in? A. Well, I am not sure I recall every form of insurance that you mentioned.

Q. For instance, the boiler insurance, was that a master policy for all—— A. Yes sir.

Q. And the business interruption insurance? A. Yes.

[1868] Q. The plate glass insurance? A. That was —that varied.

Q. Oh, that is right. I understand you had some mills that were windowless mills? A. Well not only that, but many of the mills did not consider insuring plate glass to be worth while. And there were very few really that obtained plate glass insurance. And the policies on that varied from year to year.

Q. How about liability insurance for motor vehicles? A. Yes, sir.

Q. That was a master policy? A. Yes, sir.

Q. And how about the general liability insurance on mill properties? A. Yes, sir.

Q. And the Lloyd's Excess Liability Insurance? A. Blanket policy.

Q. What would the excess liability insurance policy be? A. Lloyd's Policy provides additional amounts of insurance over the Liberty Mutual Policy in existence.

* * *

Cross Examination

Q. (By Mr. Janes) Mr. Wilson, do any of the D-M Mills [1869] have any insurance departments?

* * *

The Witness: No, sir. They handle many aspects of insurance.

Hearing Officer: Who handles?

The Witness: Mill personnel. But they do not have an insurance department.

Q. (By Mr. Janes) What personnel in the mill? A. Well, I would presume it varies.

Q. Well, let's take Darlington? A. Darlington, I think there has been evidence of the personnel department handling insurance matters, pertaining to the processing of group insurance and Workmen's Compensation Insurance.

The personnel manager, the superintendent of the mill, and the mill treasurer are involved directly with the handling of the claim, the processing of it, all of the details involved.

Q. Would that be substantially true in the other plants? A. Yes, it would.

* * *

[1873] Q. Now, Mr. Wilson, during the entire period of 1955, 1956 and 1957, covered by your questioning by Mr. Dyer, was there any instance where Darlington paid any more for the benefits under the coverages as you described them than it would have paid had there been a series of single policies issued to Darlington, itself? A. No, sir, I don't think so.

Q. Correspondingly, is there any instance where adverse experience at any mill corporation or mill corporation property where the mill was selling through Deering-Milliken and Company—where that adverse experience caused any expense or increase in rate to Darlington? A. No, sir.

Mr. Janes: I object to that.

Hearing Officer: Read the question.

(The question read by reporter.)

Mr. Updike: Is that question still obscure, Mr. Buchanan? If so, I will rephrase it.

[1874] The Witness: No, sir, Mr. Updike.

Q. (By Mr. Updike) Now, on the other hand, did the inclusion of Darlington under so-called blanket policies increase the benefits to Darlington for the premiums that it was paying? A. Yes, sir.

Q. Measurably so? A. Yes, sir.

I think the most important of those was brought out in the discussion of fire insurance with the unlimited, almost, amount of insurance that could be applied to Darlington.

Q. Did Mr. Dyer ask you about this on his questioning this morning? A. I thought he did, sir.

Mr. Dyer: I asked a question about the fire insurance policy being a blanket policy.

Q. (By Mr. Updike) Would you be more specific with respect to the fire insurance coverage at Darlington?

To what extent did Darlington receive a greater benefit for the premium paid than it might have received under individual policy just covering Darlington alone? A. Well, a blanket policy in itself is—I thought I understood your question to be what if Darlington had purchased a fire insurance policy on their own, they would have been limited by the specific amount of insurance they paid. And [1875] as I recall, in Darlington's case, their amount of insurance was somewhere around $6 million. The total fire insurance blanket policy amounted to approximately $170— or $175 million. And this limit was available to Darlington in any single loss.

Q. In other words if Darlington's single loss were in excess of six millon dollars, it could—— A. It could have

collected the excess amount, which is very important with the fluctuations that occur in raw materials and finished goods at any given time.

Hearing Officer: Would that be at the same premium to Darlington?

The Witness: Yes, sir. There is no additional premium for that. We merely pyramid the amount of insurance.

* * *

Q. (By Mr. Updike) In dealing with the mill treasurers, were there any decisions by them with respect to insurance coverage that were different and unique treasurer by treasurer so to speak? [1876] A. Well, the group insurance varied all over the lot. Each mill selected their own benefits very definitely. It varied.

Q. Was that true with respect to Mr. Oeland at Darlington? A. Yes, sir. His benefits were selected at Darlington. And I presume part of his basis of selection was for the needs and competitiveness of other mills in the area, which would be greatly different from any other mill.

Q. I think you have already told us that some of the mill treasurers rejected plate glass insurance as unimportant. A. Yes. I mentioned that just a few seconds ago. And I can think of two mills that rejected the portion—a portion of our boiler insurance policy that they considered completely unnecessary. Or at least they were not willing to pay the premium for it.

* * *

[1877] Q. Now, as I understand your testimony, the only policies at Darlington that touched the hourly-paid employees were Workmen's Compensation and Group Life. Am I correct in that? A. Yes.

Q. As to those policies Deering-Milliken was not a party in either instance, was it? A. They were not named on either of those policies, no.

Q. Deering-Milliken had its own policy coverage with respect to group life, did it not?

[1878] I believe you testified to that? A. Yes, sir.

Was that also true with respect to Workmen's Compensation? A. Yes, sir.

* * *

Redirect Examination

Q. (By Mr. Dyer) Just one question.

Was the group health insurance at Deering-Milliken held by the same carrier as it was for all the mill corporations? A. Yes, sir.

Q. What about Workmen's Compensation? A. Yes, sir.

Q. Same carriers? A. Yes, sir.

* * *

[1882] KENNETH M. LOWRY, was called to the stand as a witness, and having been first duly sworn, was examined and testified as follows:

Trial Examiner: Where do you live?
The Witness: In Greenville, South Carolina.

Direct Examination

Q. (By Mr. Dyer) Mr. Lowry, can you tell us what your connection with the Deering, Milliken Service Corporation is? A. Yes, sir. I am General Manager of the Palmetto Service Corporation it is now.

Q. Pardon me? A. It is now the Palmetto Service Corporation.

Q. In other words, the name has been changed from Deering, Milliken Service Corporation to Palmetto Service Corporation? A. Yes, sir.

Q. Can you tell us in 1956 were you the Manager of the Deering, Milliken Service Corporation at that time?

* * *

[1883] Q. (By Mr. Dyer) Mr. Lowry, when did you come with the Deering, Milliken Service Corporation? A. In 1951 when it was formed.

Q. I see. And where had you been prior to that time? A. With Judson Mills.

Q. Judson Mills is one of the mills which sells through Deering, Milliken Service Corporation? A. That is correct.

Mr. Updike: No, not through the Service Corporation. Through Deering, Milliken and Co.

Mr. Dyer: Yes. I am sorry. The Deering, Milliken and Co., Inc.?

The Witness: Yes.

Q. (By Mr. Dyer) Had you been with Judson Mills—had you been with any other mill besides Judson prior to that time? A. I did work for Abbeville Mills and Laurens Mills and Excelsior-Clemson.

Trial Examiner: Are all of these what we are calling Deering, Milliken Mills?

* * *

[1884] Q. Can you tell us approximately what size staff the Service Corporation has? A. At the present time?

Q. No. In 1956? A. The Industrial Engineering Department had between 20 and 25 people. I am not sure of the rest of the departments.

Q. Among the people in the Industrial Engineering Department did you have a Mr. Moss? A. Yes, sir.

Q. What was his position? A. He was my assistant.

Q. And what about Mr. Hubbard? A. Mr. Hubbard was one of the industrial engineers.

Q. I see. Can you tell us where Mr. Moss came from prior to coming with Deering, Milliken Service Corporation? [1885] A. Yes, sir. He came from Fiberglas.

Q. It that a subsidiary of Owens-Corning Glass Company? A. Yes, sir.

Q. Had Mr. Moss had any experience with any of the mills, Deering, Milliken Mills, before coming to Deering, Milliken Service Corporation? A. No, sir, he had not.

Q. What about Mr. Hubbard? A. Yes, sir. Mr. Hubbard had experience at Judson Mills.

Q. I see.

* * *

Q. (By Mr. Dyer) Mr. Lowry, is this the standard form of agreement by which the Service Corporation entered into a contract with each of the many mills? A. Each of the mills that sell through Deering Milliken; is that what you mean?

[1886] Q. Yes. A. Yes, sir.

Q. All right.

Now, on this Service Agreement—this is the contract between Darlington and the Service Corporation; is that correct? A. Yes, sir.

* * *

[1887] Q. You mean that before 1951 several departments did exist which did various pieces of business, and they were later incorporated into Deering, Milliken Service Corporation? A. Yes, sir.

Q. Can you tell us what those were?

* * *

The Witness: I am sorry.

The Purchasing Department, the Cotton Purchasing Department, Cotton Waste Department, the Yarn Department, the Textile Machinery Department, the Engineering Department, the Industrial Engineering Department, Cost Department, and [1888] Placement Department.

Q. (By Mr. Dyer) They had no corporate form prior to 1951; is that correct? A. Yes, sir.

* * *

[1889] Q. (By Mr. Dyer) I see.

In other words, the Industrial Engineering Department, as such, as set up at Judson Mills? And did it service all the other mills? A. Yes, sir.

Q. Now, can you tell us whether all of the corporations, the mill corporations, in 1956 owned stock in the Service Corporation? A. Yes, sir.

Q. Did the Service Corporation perform any services for any corporations which did not own stock in Deering Milliken Service Corporation? A. Yes, sir.

Q. For what other corporations? A. For W. R. Grace and Company.

* * *

[1890] Q. (By Mr. Dyer) Can you tell us what company that is? A. It is a company that owns some textile mills in South America, and some purchasing was done for them.

Q. This was when, in 1955 or 1956? A. I believe that was in 1955. I would have to check that, however.

* * *

Trial Examiner: The question was did it perform services for any other corporations besides W. R. Grace?

Mr. Updike: With respect to any mills selling through Deering, Milliken, I guess is the question.

Trial Examiner: All right.

The Witness: Not that I am aware of.

Mr. Dyer: All right.

* * *

[1891] Mr. Updike: I think Mr. Roger Milliken is a Director of W. R. Grace and Company; but otherwise there is no connection. It is a well known company listed on the New York Stock Exchange.

* * *

[1892] Mr. Updike: Mr. Dyer, before you go on with that exhibit, May I read to the Examiner one brief portion of Exhibit F-1 which has not been referred to?

I am reading from paragraph 4: "Nothing herein contained shall require the Second Party"—that is Darlington Manufacturing Company—"to avail itself of the services of any particular Department or Departments of DMSC or prohibit the Second Party"—Darlington again—"from [1893] contracting with any other person, firm or corporation for services of the same or a similar kind as those offered by any Department."

In paragraph 6 it says: "This agreement may be terminated at any time by either party upon not more than sixty days' and not less than forty days' notice in writing."

And then the terms upon which the termination takes place are then set out.

* * *

Q. (By Mr. Dyer) Referring again to GC F-1, let me ask you if any of the corporations which were stockholders of Deering, Milliken Service Corporation ever terminated their agreements on any other basis except their liquidation? A. No, sir.

* * *

Q. (By Mr. Dyer) Now, there are a number of shares of stock listed, certain corporations having one, and some of them three and four, and some two.

Can you tell us on what basis corporations bought their shares of stock? A. I was not familiar with that at that time.

Q. Well, have you since become familiar with it? [1894] A. Yes, sir.

Q. And how is it done? A. Each mill that is sold through Deering, Milliken owns a share of stock.

Q. I notice some of them own more than one share of stock. On what basis do they own more? A. Because they have more than one operating unit.

* * *

[1897] Q. (By Mr. Dyer) Then the form of paper which you are holding now, GC F-3, you said, is obsolete but is presently being used at Deering, Milliken Service Corporation as a scratch pad form; is that right? A. Yes, sir.

[1898] Q. And when did this form become obsolete? A. When the Service Corporation was formed, I believe.

Q. In other words, this is the form that was in use prior to the incorporation of the Service Corporation by the Textile Machinery Department; is that right? A. Yes, sir.

* * *

[1908] Trial Examiner: Have employees of Deering, Milliken Service Corporation——

Mr. Updike: Former employees of the Service Corporation.

Trial Examiner: All right, former employees. Have former [1909] employees of Deering, Milliken Service Corporation gone to work with various mills which sell through Deering, Milliken?

The Witness: Yes, sir.

Q. (By Mr. Dyer) And have similarly people from the mills gone to work for Deering, Milliken Service Corporation? A. Yes, sir.

Q. Limiting it to your own department, the Industrial Engineering Department, has there been much turnover in that regard? A. Of people being hired by the mills that sell through Deering, Milliken?

Q. Yes, sir. And you hiring people from the mills? A. Yes, sir.

Q. Can you give us an idea of what that turnover was, say, in 1955 and 1956? A. I would estimate approximately ten men may have gone to work for the mills and separated from the Service Corporation.

Q. How about people coming into the Service Corporation? A. I think it was perhaps two or three.

* * *

[1910] Q. What other type of projects would there be? In other words, if it was a project that only that mill

could benefit from, the mill would be charged; is that right? A. Yes, sir.

Q. If it was a project that other mills could benefit from, how would the charges be made? A. Well, that was done at the start of the year by an estimated budget of what the activities of the department would be for the coming year. And it was approved by the treasurers.

[1911] Q. I see. Would those be called projects? A. They would be called the activities of the Department rather than projects.

Q. In those activities, for instance, if you had, say, some question of how a loom would operate with certain equipment added to it, would that be a project such as the other mills might benefit from? A. Yes, sir.

Q. And how would the cost of the Deering, Milliken Industrial Engineering Department personnel be apportioned to that? A. On a project of that type, it would be on the number of looms. Of that particular type of loom, that is, that the mills that we were servicing had.

Q. In other words, if "A" mill had fifty of those looms, and "B" mill had two hundred of those looms, et cetera, right down through the whole run of mills, you would apportion the cost by the number of looms in each? A. Yes.

Q. Of that same type?

Mr. Updike: The phrase "the whole run of mills" assumes that all the looms did exist in all the mills.

Mr. Dyer: Yes, sir.

Mr. Updike: You must remember here we are dealing perhaps with woolen mills, synthetics mills, and so on.

[1912] Mr. Dyer: Yes. sir.

Trial Examiner. The apportionment would be made among all the mills according to a given type? And the mills that did not have that type would presumably be zero?

Mr. Updike: Exactly. That is right.

Trial Examiner: And these were called projects, were we told?

Mr. Updike: Activities.

Mr. Dyer: Activities. yes.

* * *

[1913] Q. (By Mr. Dyer) Now, at the time of Darlington's liquidation, Mr. Lowry, did you make a survey or cause a survey to be made of Darlington's supervisory personnel?

* * *

Q. (By Mr. Dyer) Was any survey made of the Darlington supervisory personnel? [1914] A. I asked Mr. Oeland regarding men that he thought I might find useful in our type of work. And I assumed that he did make a survey.

Q. Well, what were you given by Mr. Oeland? Were you given a list of names? A. Yes. Names of people that he thought I might find useful in the Industrial Engineering Department because of their past experience.

Q. Did you, pursuant to the list, offer to those people at Darlington—did you offer jobs to those people from Darlington? A. Well, unfortunately most of them were located at other mills other than Darlington prior to the time that we were going to take them on our payroll.

Q. I understand that. But right after Mr. Oeland wrote this letter to you——

Trial Examiner: Well, when you say "they were located" you mean they got jobs?

The Witness: Got jobs, yes, sir.

Q. (By Mr. Dyer) Did you offer to take the complete list as handed to you by Mr. Oeland? A. I don't recall exactly how we handled that. Mr. Oeland and I discussed the people. And I told Mr. Oeland the ones that I felt would be useful to us in our work. And I think we agreed on that basis.

[1915] Q. And were you taking all of these people on the DMIED payroll with the expectation that some of them might be picked up by the other mills? A. By "the other mills" you mean the other mills which were selling through Deering, Milliken?

Q. Yes. A. Yes, sir.

Q. I think in the first sentence of this letter addressed to you Mr. Oeland speaks of a three months period. A. Yes, sir.

Q. Can you tell us what the purpose of that was? A. We felt that in three months we would have an opportunity to evaluate the type of work that they were doing in that department.

It is a normal more or less probationary period for people who are starting in the Industrial Engineering Department.

Q. Well, was the purpose of it also——

Trial Examiner: In which department?

The Witness: In the Industrial Engineering Department.

Q. (By Mr. Dyer) Is the purpose of it also to allow a period of time in which these people could also be picked up by the other mills? A. If the other mills so desired, yes.

* * *

[1916] Q. In other words, none of the people who had been working at Darlington did go to work for DMIED?

* * *

Mr. Goodwin did come back to Industrial Engineering.

* * *

[1919] Mr. Dyer: May I have this marked GC F-9.

* * *

Q. (By Mr. Dyer) Is this in reference to one of the employees who is scheduled to work for DMIED? A. Yes, sir.

Q. Now, this individual, J. E. Anderson, is a yard foreman; is that correct? A. Yes, sir.

Q. Did he have any engineering experience? A. No, sir.

[1920] Q. So, when DMIED made arrangements to put Mr. Anderson on DMIED's payroll, was it for the purpose of holding him for three months so that another mill might be able to pick him up? A. No, sir.

It was commonly a practice to put a practical man with an engineer, particularly on warehouse layouts, materials-handling to get the benefit of their practical experience.

* * *

[1922] Q. (By Mr. Dyer) In the original letter you stated—that is, in the letter from Mr. Oeland to you—that contained quite a few more names than just this letter; is that correct? A. We discussed more names.

Q. Approximately how many? Do you have any recollection? Would it be ten or twelve people? A. It would be approximately ten or twelve people, yes, sir.

Q. All right. And I think in accordance with the Trial Examiner's statement, there were expectations that some, if not all, of these people would either go to work at DM or at [1923] some of the mills, at some of the DM Mills; is that right? A. If the mills wanted to hire those people, yes.

* * *

Q. (By Mr. Dyer) Well, let me particularize even further. At the Industrial Engineering Department of DMSC or DM Mills? A. Yes, sir.

* * *

[1927] Mr. Dyer: Mark this GC F-11.

* * *

Q. (By Mr. Dyer) Now, in the first paragraph, Mr. Lowry, you make reference to the discussion at our meeting at Drayton yesterday.

Can you tell us what meeting that was? A. That was a meeting of the mill treasurers.

[1928] Q. Did you attend such meetings? A. Yes, sir.

Q. Did you have any connection with any of the mills at that time as a treasurer or any other position? A. No, sir. Just in the Service Corporation.

Q. Pardon me? A. Just my connection with the Industrial Engineering Department.

Q. I see.

Now, was the prospect of hiring—well, let's first identify "I.T.T.".

What is I. T. T.? A. That is the Institute of Textile Technology in Charlesville, Virginia.

* * *

Q. Now, did you, along with the treasurers, discuss—well, [1929] let me ask this first: At these treasurers meetings, who appeared at the treasurers meetings? Do all the treasurers of all the DM Mills appear? A. The Treasurers and mill managers.

Q. And mill managers? A. Yes, sir.

Q. And who else? A. Various members of the Service Corporation. Perhaps a mill superintendent.

Q. Does Mr. Roger Milliken appear at these meetings? A. Yes, sir.

Q. What about the Research Corporation? A. Yes, sir.

Q. Now, at this meeting, was the prospective employment of I. T. T. graduates discussed? A. Yes, sir.

Q. And referring to the paragraph under the names, was it generally agreed by all the persons present at this Treasurers meeting that a salary of five thousand dollars would be offered to these prospective graduates? A. If the mill treasurer after interviewing the man decided that he wanted to employ him, then he would offer five thousand dollars if he felt the man was worth it.

Q. Well, what I am asking is: At the Treasurers meeting was the amount of salary to be offered to these graduates [1930] discussed? And was it agreed that five thousand dollars would be the figure offered? A. Yes, sir.

Q. Now, in regard to I. T. T., did the Deering, Milliken Industrial Engineering Department maintain some form of liaison between the mills and I. T. T.? A. We attended—I usually attended their technical advisory committee meetings.

Trial Examiner: You mean the I. T. T.?

The Witness: The I. T. T. Technical Advisory Committee meetings, yes.

Q. (By Mr. Dyer) And after attending these meetings, did you pass on the information which you felt the mills should have to the mills? A. In a number of cases, yes, sir.

Q. And any information which emanated from I. T. T. and other sources, say bulletins, and so forth, would you be the conduit, shall we say, for passing that information on to the DM Mills? A. No, sir. That would go directly to the mill concerned.

Q. Would go directly to the mills? A. Yes, sir.

Q. And were the mills——

Trial Examiner: Well, from whom would it go?

Q. (By Mr. Dyer:) From I. T. T.? [1931] A. I. T. T., yes, sir.

Q. Were the mills making contributions to this Institute? A. Yes, sir.

Q. And did the Service Corporation make contributions to the Institute? A. No, sir.

Q. Now, as to the number of names on there and mills to which they were to go, who decided who was going to which mill? A. The individual mill treasurer who had a knowledge of these men from their visits to I. T. T.

Q. In other words, the mill treasurers also visited I. T. T.? A. Yes.

* * *

Q. (By Mr. Dyer) Was the arrangement of which of the I. T. T. graduates was going to which mill, was that arranged at the Treasurers Meeting? [1932] A. Yes, sir.

Q. Now, to get into the functions of the Industrial Engineering Department, can you tell us what services the Industrial Engineering Department offered to the DM Mills? A. Yes, sir.

It was the advice and consultation on such things as plant layout, materials-handling problems, waste control practices, time study training, work assignments, wage incentive plans, and such work as that.

* * *

[1935] Trial Examiner: GC F-12 is received in evidence.

* * *

Q. (By Mr. Dyer) Now, in this memorandum from Mr. Milliken, did you receive a copy of this memorandum? A. It isn't indicated. But I recall seeing this letter.

Q. All right.

In this memorandum, Mr. Milliken indicates he has been talking with you. And he asked you to find out about the status of the different projects that apparently these mills had been working on; is that correct? [1936] A. Yes, sir.

Q. Now, can you tell us what these projects would be? A. The various mill treasurers agreed that each mill would work on a particular project such as a carding project, or what is the best speed to run a card, and what is the best type of quilling to use.

And that is the type of project that he is referring to.

Q. All right.

And who, if you can tell me, thought up the idea for these various projects? A. It was the result of a meeting that was held. It just came forth from the group. I don't think you can say any one person thought up the idea.

Q. Well, when you talk about a meeting, would that be one of the treasurers meetings? A. Yes, sir.

Q. Just to get it on the record: Are the treasurers meetings held on a quarterly basis? A. They were at that time, yes, sir.

Q. During 1955 and 1956? A. Yes, sir.

Q. Now, as a result, the decision at one of the treasurers meetings was made that the various mills would take on various projects; is that right? A. Yes, sir.

[1937] Q. And was the function of the Industrial Engineering Department to coordinate those projects? A. Well, the function of the Industrial Engineering Department was to work with the mills' industrial engineering departments to compile this information for presentation.

Q. Well, in addition to compiling the information for presentation, did the industrial Engineering Department work directly with the mills in evaluating the project or in attempting to direct its course or what direction it should take? A. They worked with them in an advisory capacity, yes, sir.

Q. And were the results of these projects to be made known to all of the mills, all the DM Mills? A. Yes, sir.

Q. For whatever benefit they could get out of it? A. Yes, sir.

* * *

[1938] Q. (By Mr. Dyer) What did your Department do? A. We worked with the mill on the form the report was going to make. The mill would make its own presentation at the meeting.

* * *

[1940] Q. (By Mr. Dyer) Now, Mr. Oeland asked you to make further checks to see if the loom sides are strong enough to support this beam.

Was that part of your regular function in the Industrial Engineering Department? A. Yes, sir.

Q. Would this be a request similar to those you had received from the other mills as to the strength of the machinery and what it could do? A. Yes, sir.

This is because we had a specialist on looms, Mr. Goodwin, who had been with Draper and was familiar with this particular product.

* * *

[1941] Q. Now, did you also receive requests from mills such as one from Darlington in October of 1955 about DMIED's experience in putting control rolls on forty-five inch cards? A. DMIED would have no experience in putting control rolls on, but we may have been familiar with a mill that had done it.

Q. All right. And where you were familiar with a mill that had had that experience, would you refer the requesting person to that mill for the information? A. Yes, sir.

Mr. Dyer: Mark this GC F-14.

* * *

[1942] Q. (By Mr. Dyer) Mr. Lowry, can you tell us what a MTM course is? A. It is a Methods Time Measurement. It is a form of motion study.

Q. All right.

And did Mr. Hubbard of the DMIED specialize in giving courses in methods time measurement?

Trial Examiner: Who was that?

Mr. Dyer: Mr. Hubbard.

The Witness: That was one of his functions, yes, sir.

Q. (By Mr. Dyer) And did he give such courses at all of the DM Mills? A. He gave courses that the mills would send their men to, if they desired.

Q. Would send their men what? [1943] A. If they desired to send a man to the course, they would do so. They were usually located at a mill, at the site, for convenience.

Q. I see.

And what line of individuals at a mill would be included in such a course? A. Usually they are industrial engineering department trainees.

Q. Would any of the supervisory department personnel in the Operating Division of the mill be included? A. Occasionally they would be, yes.

* * *

[1945] Q. Excuse me.

In making your audit of the Industrial Engineering Department of each mill, would your audit consist mainly of the practices or would you also take into account the personnel of the Industrial Engineering Department? A. It would be the way the personnel applied the practices.

Q. All right.

Would you make recommendations in regard to the practices of that personnel? A. Yes, sir.

* * *

[1955] Trial Examiner: GC F-17 is received in evidence.

* * *

Q. (By Mr. Dyer) Can you tell us in general what individuals are addressed on this memorandum? Are these the personnel managers and the mill treasurers? A. The memorandum is addressed to the Industrial Engineering De-Department managers of the various mills.

Q. I see.

With copies going to the mill treasurers? [1956] A. The mill treasurers and the mill manager or superintendent.

Q. I see. Thank you.

Now, this refers to another course. Were there previous courses given by Mr. Hubbard to the—would it be in this case the industrial engineering trainees on time study? A. Yes, sir.

Q. And was there any regularity in giving these time study courses, or just as called for? A. It was usually as requested by the mills depending upon how their trainees were employed by the mills.

Q. And in giving these courses, did Mr. Hubbard—what did he work from? Was there any particular reference that he worked from? A. Yes, sir. He worked from the combination of a course which was given by Ralph Barnes at the University of Iowa, by notes that were gotten from Allen Mogensen who conducts the Work Simplification Conferences, by notes that were obtained from consulting engineers who had done work in some of the mills at the mill's request.

Q. Now, in addition to industrial engineering trainees at the various mills engaging in time study courses at the mills, did DMIED personnel make time studies at the various DM mills? A. Not unless a mill didn't have adequate personnel at their plant?

[1957] If they had a series of rush jobs they might call on DMIED to assign a man to that mill for a certain period of time.

Mr. Dyer: Mark this GC F-18.

* * *

[1958] Q. (By Mr. Dyer) Let me ask you, Mr. Lowry, a fee is mentioned in this exhibit of 150 per man for the fifteen days training.

Who was to receive this fee? A. DMIED.

Q. Mr. Hubbard was not to receive the fee personally, but it was to go to DMIED? A. Yes, sir.

Q. To cover the cost of training? A. Yes, sir.

Q. Would materials be provided by DMIED in regard to this training? A. Yes, sir.

Q. Such as what? A. Such as notes, stop watches, practice boards, clip boards, machinery designed to help people with their rating, and things of that nature.

Q. You said notes. That would be notes that you referred to previously from which Mr. Hubbard worked in setting out this course? [1959] A. Yes, sir.

Q. Would there be any textural information, any books of any type, that would be given out to them? A. Yes, sir.

Q. And would those be books prepared by DMIED or other books? A. It would be books prepared by DMIED, certain of the information. The rest of it would be obtained and compiled and given to the persons attending in the form of a notebook.

* * *

Trial Examiner: GC F-18 is received.

* * *

Q. (By Mr. Dyer) Now, in the first paragraph, Mr. Lowry, [1960] you make reference to "at our last management and development committee meeting."

What is that committee?

A. That was a committee of Treasurers who were to discuss additional training that could be provided for supervisory personnel to give them tools to do their job better.

Q. Who set up the committee? A. It was at a Treasurer's meeting that it was set up. So, the Treasurers themselves set the committee up.

Q. Who acts as the Chairman of these Treasurers Meetings, if anyone? A. Usually a chairman is appointed

at a meeting—a chairman is appointed for the next meeting. And it would be usually a Mill Treasurer or a Mill Manager.

Q. Who does the appointing? A. Whoever the Chairman is at that meeting. The Chairman will ask someone to take the next meeting.

Q. I see. Now, are the names as listed on this exhibit—do they constitute the membership of the committee?

Trial Examiner: The names listed where? Do you mean the two up above?

Mr. Dyer: Yes, sir.

The Witness: They are the Mill Treasurers.

Trial Examiner: Are they the members of the committee?

The Witness: And they are also the members of the [1961] Management and Development Committee.

Q. (By Mr. Dyer) Now, not all of the names up there are Mill Treasurers, are they? A. They are either Mill Treasurers or Vice Presidents holding the same comparable position.

* * *

[1965] Trial Examiner: GC F-20 is received.

* * *

[1966] Mr. Updike: The Board meeting was held September 12th, and the stockholders' meeting was held October 17th?

Mr. Dyer: That is correct.

Q. (By Mr. Dyer) Mr. Lowry, in the first paragraph, reference is made to a poster being put out in Burlington.

Can you indicate—well, you indicate that the various mill treasurers received copies from Anne Ebersbach.

Is Anne Ebersbach Mr. Roger Milliken's personal secretary? A. Yes, sir.

Q. Can you tell us what these posters which the mill Treasurers received concerned? A. I don't recall specifically the poster. But I do recall the point that I was making in this memorandum. And the poster had a great big splash across: "Stretch".

And that was the point that I was making in this: that apparently they had not done a good job.

Trial Examiner: They had not, you say?

The Witness: Burlington had not done a good job in their industrial activities.

Q. (By Mr. Dyer) You mean by "big splash" that there was a big poster put out by Burlington in which someone had written across "Stretch out"? [1967] A. No. A poster put out by the union.

Q. I see.

Your point in communicating with the mill was that you wanted the mills to do a better job of selling where work assignment changes were being made; is that right? A. I asked the mills if they would review with their industrial Engineering Department and with their supervisors the procedures that were being followed so that they could assure themselves that they were doing an adequate job.

Q. And you offered any assistance that you could give; is that correct? A. Yes, sir.

Q. What form would such assistance take? Would that be sending personnel from DMIED to the mill in question? A. Discussing with it; discussing the changes with the Mill Treasurer, or whoever he designated, as the proper

Industrial Engineering procedures to follow, and a study of work assignments.

Q. And would it also include the proper way to make such changes known to the personnel involved? A. It would include a suggested way.

Mr. Updike: A recommended way?
The Witness: Yes.

Q. (By Mr. Dyer) Now, when you say in your memorandum "a thorough selling job", is what you are referring to the idea that——

[1968] Trial Examiner: Well, in what connection is that?

Mr. Dyer: Excuse me.

In the second sentence it says: "I think this points out to us the absolute necessity of doing a thorough selling job on any change that is being made in our work assignments."

When you speak of the selling job, do you mean by that putting across to the employees what the changes are about?

A. And making the employee a participant in the change insofar as possible; telling them in advance that their job will be studied, and asking for their suggestions and their help in making the job more productive.

Q. Well, is that the selling job? In other words, getting the employee to participate in the change? A. Yes, sir.

* * *

[1981] Q. Now, the central cotton warehouse was set up as the Cotton Blossom Warehouse; is that correct? A. Yes, sir.

Mr. Updike: Mr. Buchanan, Mr. Dyer has stated to me that he wished to place on the record the ownership of the stock in the Cotton Blossom Central Warehouse. And for the record I state that the ownership mill by mill utilizing cotton—of course, it is confined to those mills which do consume cotton—is similar to the basis that I outlined the other day in another connection. That is, you take all the cotton consumed as a denominator by the total of the mills here involved; and then the numerator of the fraction is the amount of cotton consumed by the particular mill. And that fraction of the total stock of the Cotton Blossom is what is owned by that mill.

There is one footnote to that last statement: I understand that Mr. Marshall Stone, Treasurer of the Pacolet Manufacturing Company, elected not to go forward with this program except to the extent of five percent of his cotton consumption. So that his participation is limited to that fraction of the cotton consumption of Pacolet.

Mr. Dyer: Would it be true, then, that the rest of the percentage of stock was distributed among the other mills that [1982] did participate.

Mr. Updike: Yes, on the basis indicated.

The amount of cotton utilized, figuring the denominator, would only include five percent of Pacolet's cotton.

Mr. Dyer: I see.

Mr. Updike: And the numerator of the fraction would also be five percent of Pacolet's cotton.

* * *

[1985] Q. Mr. Moss states in GC F-25 that both he and you, Mr. Lowry, would visit Darlington in the near

future and review a program designed to insure the development and installation of job assignments which will be current with the installation of new machinery and auxiliary equipment."

Can you tell us what the program was? A. Yes, sir.

Our program was to work with his Industrial Engineering Department so that as the machinery was put into place the proper studies were made and temporary standards were set up until the machines became adjusted and running and the quality of work was at the acceptable level.

Q. All right.

And in setting up these temporary assignments, would you call on your experience in other mills? A. We did not set the standards. The Industrial Engineering Department of the mill set the standards. And we advised.

Q. Would you advise the Industrial Engineering Department of each mill in each case what you thought the standards should be, based on your experience at other mills? A. No. We would advise them of the procedure.

Q. Of the procedure solely? A. To be used, yes. Because a standard at one mill would be something entirely different at another mill. There were [1986] variations in machinery and in cotton, in the amount of cleaning that a particular treasurer or manager, mill manager, decides he wants to do on machinery. So, one standard at one mill could not be used at another mill.

Q. Well, would you use the standards at other mills as a references? A. Yes, sir, we would do that.

Q. Were you called upon by Darlington to review the program once it had been set up? A. I am not sure of that. I believe so.

Q. And in the review of the Department, would you suggest changes to the Department for these job assignments? A. Not for the job assignments. For their method of performing the industrial engineering function.

Q. I see.

Did your Department ever set up standards for a job or jobs at any of the mills? I mean exact standards of work to be performed? A. Not unless it was a case where they were shorthanded at a mill and they asked for a man to be assigned to them to work in their industrial engineering department under their supervision.

* * *

[1987] Q. (By Mr. Dyer) Now, referring you to GC F-26, Mr. Hawkins was then the Technical Superintendent of Darlington; is that correct? A. Yes.

Q. He asked Mr. Clark Hubbard of your Department for a Battery Hand Manual as prepared by your Department for Monarch Mills and Lockhart Plant.

For my edification, as well as any others who wish to be edified, can you tell us what a Battery Hand is? A. A Battery Hand is an operator who replaces quills on a loom. It is what they call a Battery of Quills. And as [1988] the yarn is used up from one quill, it automatically changes and puts a new quill in the shuttle. And the battery hand is the person who replaces the quills in the battery.

Q. I see.

Now, had your department prepared a manual for the battery hand job at the Lockhart Plant of Monarch? A. No. Our Department had worked with Lockhart and the manual was prepared by the Lockhart Industrial Engineering Department.

Q. Did your department have copies of such? A. Yes, we did.

Q. And did you forward copies to Darlington at Mr. Hawkins' request? A. Yes, sir, we did.

Q. Can you tell us just what such a manual would include? A. It was basically a job prescription telling what the job was, a breakdown of the elements of work in the job, standard times for performing the elements, and a calculation of the work assignment.

Q. All right. Would there be anything regarding pay on that? A. Yes, sir.

Q. Now, turning to GC F-27, had Darlington made—had the Industrial Engineering Department at Darlington made a study [1989] of the spinner and doffer jobs? A. Yes, sir.

* * *

Q. (By Mr. Dyer) Did Darlington request you have someone work with them to prepare a manual for those jobs? A. I am not sure whether that was to prepare a manual or to review the procedures that were used in working up these assignments.

Q. There is a reference in here to the supervisor's checklist. What is that? A. That was some work that was done at the request of one mill to make up a list that the supervisors could use as to what they should be checking as far as the industrial engineering function is concerned?

Q. Well, can you tell me what the reference is to it here where Mr. Hubbard says "With reference to your study of spinner and doffer jobs, I can plan to work with you as soon as the supervisors' check list has been completed."? A. That meant when he had completed his assignment with that mill.

Q. I see. Now, can you tell us, if you know, whether manuals were written for these jobs at Darlington? A. I am not sure. But I assume they were.

Q. All right.

* * *

[1991] Trial Examiner: GC F-28 is received in evidence.

* * *

Q. (By Mr. Dyer) Was this form used only by Darlington, or was it used by some other mills also? A. Some other mills used this form, yes.

Q. I notice at the top it is typed on the form "Mill" and then a dash, and the word "Darlington" is typed in. A. Yes.

* * *

Q. Can you tell us whether Mr. Clark Hubbard did some work in regard to this form? A. I believe he did.

* * *

[1993] And under the "Comments" it states: "September 1954—Job installed. Revised weekly in accordance with pkg. wts. and tailings."

What does that mean? A. That means as the package weights vary coming from the spinning room, that the work content of that job changes. So, the assignment is changed to compensate for additional work or if there is less work, the assignment is changed upward.

Q. Would that also have something to do with pay rates? A. It would have something to do with the incentive rate.

Q. And the incentive rate would be changed each week? A. Yes, sir.

* * *

[1994] Q. (By Mr. Dyer) Where manuals were prepared, if they were prepared at Darlington, would copies of those manuals be forwarded to the I. E. Department? A. Yes.

Q. In the case of manuals prepared on such a job, would such manuals be sent to your department? A. Yes, sir.

Q. Would your department make comparisons of those manuals? A. Unless we were using it to advise with a mill on the installation that they were working on, no, sir.

* * *

[1995] Q. (By Mr. Dyer) Now, was a part of the purpose of this survey to determine how many industrial engineers or industrial engineering trainees would be needed at Darlington to make the survey called for in here? A. Yes, sir.

Q. In other words, this was to help Darlington determine how many people they would need to do these jobs? A. How many people they would need in their industrial engineering staff, yes, sir.

* * *

[1996] Now, was your department asked to help make surveys such as this at other DM Mills? A. Yes, sir.

Mr. Updike: When you say "Surveys such as this" you mean surveys designed to estimate the total amount of time it would take for DMIED, or for somebody, to do the particular work involved?

Mr. Dyer: Yes, sir, that is what I mean.

[1997] Q. (By Mr. Dyer) Did you understand my question as such? A. Yes, sir.

Q. Let me go back for one moment to the question of the form of this standard survey. Was this form itself—you

said it was used by Darlington and a number of other mills. Can you tell us who designed this form itself? A. I am sorry I cannot. It may have been Clark Hubbard.

* * *

Trial Examiner: GC F-29 will be received in evidence.

* * *

[1998] (By Mr. Dyer) Mr. Lowry, in the lefthand corner, the names—well, those are the Mill Treasurers, are they not? A. Yes, sir.

Q. And in the courtesy copies, who are those individuals? Are those mill managers or superintendents? I note at the bottom is the name Mr. Roger Milliken. A. Yes. The other individuals are mill managers or superintendents.

Q. Thank you.

Now, can you tell us what the Quarterly Job Assignment Savings Report is? A. Yes, sir. That was a report that the mills wished to have compiled to show how they stood in comparison with their goal. And also how they stood on their accomplishments as compared to other mills in the group.

Q. Now, in the last paragraph on the first page, you refer to this:

> "In order to more thoroughly cover the activity and progress of the Industrial Engineering Departments, we have been asked to develop a program to systematically review each mill's Industrial Engineering operating procedures and program. This review is to stress compliance with standard procedures such as:
>
> "1. Time Study Techniques.
>
> "2. Method Time Measurement.

[1999] "3. Incentive Payment Procedures.

"4. Standards Manuals Preparation.

"5. Standards Maintenance and Follow Up Procedures.

"6. Programming and Goals.

"As soon as the procedure for auditing the Industrial Engineering activities is complete, we plan to visit each mill for review."

Is this what we were speaking of earlier when I asked if you audited the Industrial Engineering Departments of each of the mills?

A. Yes, sir.

Trial Examiner: First the procedure for auditing is established?

The Witness: Yes, sir.

Trial Examiner: Is that correct?

The Witness: Yes, sir.

Q. (By Mr. Dyer) Turning to the third page, this is listed as "Employees on Mill Hourly Payroll." And then the various mills are given, along with the total of the employees, and the number and percentage who are on measured jobs. And then goals are given; is that correct?

A. Yes, sir.

Q. So that by referring to this page, a mill such as Darlington, for example, could see what percentage of its employees were on measured jobs as compared to any of the other mills? [2000] A. Yes, sir.

Q. And how far they were from completion of their goal; is that correct? A. Yes, sir.

* * *

[2002] Trial Examiner: GC F-30 is received.

* * *

Q. (By Mr. Dyer) Mr. Lowry, you make reference in the initial paragraph to Mr. Milliken's letter of August 25 regarding the specific goals and recommendations for our [2003] meeting on October 11.

Can you tell us what Mr. Milliken's letter is about? A. I believe that letter was suggesting that each mill set up a goal for every process in the mill. And after I had discussed it with some of the Treasurers, they felt that that was too big a bite to take at one time. So they suggested that we just concentrate on the jobs that were outlined in this memorandum.

Q. Now, and those jobs are the jobs employing the most personnel at each of the mills; is that correct? A. Yes, sir.

Q. All right.

In your second paragraph you state: "We will be contacting you very shortly to work with you on getting up your present assignments and getting factual information about competitive assignments so that you may set your goal." A. Yes, sir.

Q. And so your department worked very closely with each of the mills in trying to help the mills set up their goals; is that right? A. Yes, sir.

Q. In that you gave information to each of the mills concerning competitive assignments. What do you mean by that? A. Assignments that are being used by mills such as Spring, Burlington, Stevens.

[2004] Q. In other words, mills outside of DM, you had information about what their job assignments were, and you were trying here to set up goals at least to better or equal them? A. Yes, sir.

* * *

[2005] Trial Examiner: GC F-31 is received.

* * *

Q. (By Mr. Dyer) Mr. Lowry, the subject is stated as "Standard Maintenance Audit, Roving Tender—Darlington."

Is this an audit made by Mr. Hubbard of the Roving Tender job at Darlington? A. This was an audit made by Mr. Hubbard of the actual conditions as compared to the conditions in the manual.

Q. I see. Was this a check in a way? A. Yes, sir.

Q. Performed at whose request? A. At the request of the mill.

Q. Was this individually requested by the mill? Or was this [2006] part of the check referred to in GC F-29? At the bottom of the paragraph, that is.

Trial Examiner: To visit each mill for review?
Mr. Dyer: Yes, sir.
The Witness: This is part of that check.

Q. (By Mr. Dyer) This is a part of the check mentioned in GC F-29? A. Yes, sir.

* * *

[2008] Q. Now, did your department maintain a record of these audits made at the various mills? A. Yes, sir.

* * *

[2009] Trial Examiner: GC F-32 will be received in evidence.

* * *

Q. (By Mr. Dyer) The subject stated on the initial page is "Salary Basis for Second Hands."

The first paragraph starts: "As you recall at our Treasurers' Meeting at Drayton on Tuesday, July 17th, there was a discussion regarding paying 'second hands' or, as they are now called in many cases, 'assistant overseers' on a salary basis. The question arose as to what the pension plan cost would be and if there would be any cost for prior service."

Can you tell us what the discussion at Drayton—can you tell us what the full discussion at Drayton was about? A. Some of the Treasurers were paying second hands on an hourly basis. And there was a discussion as to whether or not they should put them on a salary basis. And they wanted to know what it would cost their mill for the additional pension costs. And they asked if I would write and find out what that cost would be.

Q. In other words, is it true that all personnel on a salary basis of supervisory stature at the mills are in the Deering, Milliken Retirement Plan? A. I believe that is correct, yes.

Q. All right.

And if it was decided to put all second hands on a salary [2010] basis, that would automatically qualify them for the Retirement Plan? A. There were certain exceptions as were noted here.

Q. All right.

And you wrote to the law firm of Ivins, Phillips and Barker to find out what would be necessary in order to qualify them; is that correct? A. Yes, sir.

Q. And as a result of your letter to the law firm and Mr. Bomar's reply to you, were not certain changes suggested for the Retirement Plan to qualify these individuals immediately rather than having them wait two years? A. No, there were not recommendations.

Mr. Bomar said that this could be done.

Q. He said that it could be done? And he said further that if it was decided that they wanted to have the second hands qualified immediately for the Retirement Plan, some of the language of the Retirement Plan qualifications would have to be changed; is that right? A. Yes, sir.

Q. Going back to the discussion that took place at Drayton, do you recall who, if anybody, brought up the topic? A. No, I don't recall who brought it up.

Q. Now, in order to determine what the additional pension plan costs would be, did you ask each of the mills for [2011] information so that you could determine what the cost would be after sending it to an actuary to compile? A. Yes, sir.

Q. Can you tell us what information was called for in these forms?

I note that there is none attached to this memorandum. A. It was the age of the individual, the amount of salary, the length of service. I recall those.

Q. Now, was the information received from all the mills in regard to the costs? A. Regarding the——

Q. Regarding the information you requested from the mills, did you get copies from all of them? A. Yes.

Q. Did you submit that to an actuary? A. Yes, sir.

Q. And was the result reported at the next Treasurers meeting? A. No. It was given to the individual mills. And they decided whether they wanted to go on a salary basis or not.

* * *

[2012] Mr. Updike: Just so the record may be clear, I think there may be two references, not to the Deering, Milliken Mills Retirement Plan, but to the Deering, Milliken Retirement Plan. And I wanted

to be sure that this exhibit, F-32, refers only to the Deering Milliken Mills Retirement Plan.

Mr. Dyer: Excuse me. I thought there was just one plan. Are there two plans?

Mr. Updike: It is my understanding that there are.

Mr. Dyer: Excuse me.

Then can we note for the record, Mr. Examiner, that the reference should be in all these questions to the Deering, Milliken Mills Retirement Plan, rather than to the Deering, Milliken Retirement Plan.

* * *

[2015] Q. (By Mr. Dyer) So that the survey, GC F-28, was performed by your department for the purpose of finding out how much work would be needed to be done at Darlington for installation of this standard cost system; is that correct? A. The report was prepared by the Darlington Industrial Engineering Department and was reviewed with us.

Q. I see. Did Mr. Clark Hubbard assist in preparing that report? A. He may have assisted.

Q. Now, you go on to state: "In reviewing your present industrial engineering department personnel, we decided that this department's organization should be developed along the lines shown on the attached organization chart."

Now, who is the "we" who reviewed the Industrial Engineering Department's personnel and decided on the attached organizational chart? A. Mr. Oeland and his superintendent, his industrial engineer and Mr. Moss and myself.

Q. All right. And the chart as shown on the back shows spaces [2016] for various personnel; is that correct? A. Yes, sir.

Q. And shows various personnel already in place. That is, you had an I. E. trainee, an I. E. department manager, all under the technical superintendent, with all other jobs being—well, you have some marked "open"; is that correct? A. Yes, sir.

Q. In other words, for Darlington to set up a proper Industrial Engineering Department, they should follow this organization chart and employ needed personnel.

Mr. Updike: That is if they wanted a standard cost engineered system; isn't that right?

The Witness: Yes, sir.

Q. (By Mr. Dyer) As far as you knew, Darlington wanted a standard cost engineering system; is that right? A. Yes, sir.

Q. Thank you.

Mr. Updike: Not "engineering" system, but "engineered" system.

Mr. Dyer: All right.

Q. (By Mr. Dyer) Now, as far as—you go on to state that "Examination of this chart will indicate that you presently need two additional industrial engineers and in line with our discussion, you will plan to employ personnel for these openings as soon as possible. We feel that this industrial [2017] engineering organization, when developed for Darlington, will be able to complete and maintain a comprehensive program. We also feel that once this organization is developed, it should be continually maintained by making sure that when a man is transferred, a trainee is already on hand to fill the vacancy."

Now, your next paragraph states: "As the industrial engineering department is developed, it will be possible to

determine direct and indirect labor standards outlined in detail on the survey dated May 9, 1956 and we can then go ahead with other work necessary to the installation of the standard cost system.

Now, can you tell us what that other work would be? A. That would be developing supply costs detail, the amount of waste being produced, the speeds of the machines, and that type of information.

Q. And their DMIED would assist in determining that; is that correct? A. If the mill wished us to.

* * *

[2020] Q. I come now, Mr. Lowry, to a book titled "Deering, Milliken and Company, Inc., Accident Prevention Procedure" with a title "Liberty Mutual Loss Prevention Department" at the bottom.

[2021] Can you identify this for us? A. May I see it.

Q. Yes. A. Yes. That is a book that Liberty Mutual maintains for the mills.

Q. All right. What is the purpose of that book? Can you give us that just broadly? A. To help reduce accidents in the mills.

Q. And does this book have general information and also particular information with reference to the individual mills? A. Yes, sir.

Q. And in this were certain procedures set up for the mills and what to do in various instances? A. I am not sure——

Q. Well, for instance, I refer you to page ME-2 wherein hazards are set out, and recommendations for safe practices are set out. A. Yes, sir.

Q. Can you tell us who wrote this? A. Liberty Mutual Engineer.

Q. All right. And it is continued on a second page. And I see a stamp at the bottom "Approved K. M. Lowry, Deering, Milliken and Company Industrial Engineering Department." A. Yes, sir.

* * *

[2023] Q. (By Mr. Dyer) Is this book in standard use by the mills affiliated—or by the DM mills at the present time? And was it in standard use in 1956? A. Yes, sir.

Q. By the mills? A. Yes, sir.

Q. All right.

Trial Examiner: It still is used, you say?

The Witness: Yes, sir.

* * *

[2038] *Cross-Examination* (Resumed)

Q. (By Mr. Updike)

* * *

[2039] Q. Now prior to 1951, was your department, the Industrial Engineering Department, incorporated? A. No, sir.

Q. Under what name did it operate? A. The Deering, Milliken Industrial Engineering Department.

Q. Now, is that the name which appears in this rubber stamp in this exhibit? A. Yes, sir.

Mr. Dyer: Excuse me?

Q. (By Mr. Updike) It isn't an exhibit, is it? I should say in the Loss Prevention Book?

Mr. Dyer: Was the answer to the question that the name appears as Deering, Milliken Industrial Engineering Department?

Mr. Updike: Yes.

Mr. Dyer: Because if that is the answer, I would take leave to dispute it.

Mr. Updike: Actually it says, "Deering, Milliken and Company, Industrial Engineering Department."

Trial Examiner: Now, we are referring to the stamp.

[2040] Mr. Updike: To the stamp that appears on the page in the book, yes.

Trial Examiner: The witness, I think, has just told us that prior to 1951 his department operated as the Deering-Milliken Engineering Department; no "and Company" in that.

Mr. Updike: I don't think it makes any difference, because it was not incorporated; this was a name used by the witness and his associates in pursuing his activities at that time.

* * *

[2048] Q. (By Mr. Updike) Now, would you tell the Examiner the circumstances in which Mr. Goodwin, then employed at Darlington, was asked to help you with regard to the specifications for looms at Gaffney? A. Well, it was because of his past experience and his knowledge of that particular type of loom. He was very familiar with all of the specifications of that particular type of loom.

Q. Had he or had he not actually worked on the beginning of the specification problem before he left the engineering department, your department? A. Yes, sir, he had.

Q. On this project involving Gaffney, is that right? A. Yes, sir, he had worked at Gaffney.

* * *

[2059] Q. Now, you have been at this work for a good many years, have you not? A. Yes, sir.

Q. Taking the three years in question first of all, do you know of any instance where the job assignments between Mills "A", "B" and "C", working in the same general area—say three print cloth mills—were those job assignments identical from one to another?

The Witness: No, sir.

Q. (By Mr. Updike) Now what can you say with respect to the uniformity or lack of it as regards hours of work from [2060] one mill to another? A. There is no uniformity. That depends entirely on how the mill wants to schedule their production.

Mr. Dyer: Could we get some clarification? I want to know if he is talking about how many hours a week the mill works?

Mr. Updike: I assure that is what he is talking about. Is that right?

The Witness: Also the number of spare hands the mill feels they want to have. Some mills will want everyone to work 48 hours. Other mills that decide they want to try for a 40-hour week.

Q. (By Mr. Updike) The presence or absence of spare hands has some effect on the number of hours worked by the non-spare hands; is that correct? A. Yes, sir.

Q. I just wanted to be sure I understood what you were saying, Mr. Lowry.

What can you say with respect to the uniformity or non-uniformity of conditions of employment? A. As far as I know there is absolutely no uniformity at all.

Q. Have you told us who the members of the Board of Directors of the Service Corporation are? A. No, sir.

[2061] Q. I believe you told us who the stockholders were.

The stockholders, first of all, do not include Deering, Milliken and Co., Inc., is that correct? A. Yes, sir.

Q. The stockholders, I believe, are the mills whom you serve; is that right? A. Yes, sir.

Q. Now, who constitutes the Board of Directors of the Service Corporation? A. Marshall Stone, the Treasurer of Pacolet; Allen Sibley, Treasurer of Judson; Joe Norton of Gaffney; Mr. Milliken; George Asnip who is Treasurer of the worsted mills; Joe Meehan who is Treasurer of the Woolen Mills; Bill Sibley who is Treasurer of Monarch.

* * *

Q. Were you a member of the Board in 1955-1956? [2062] A. I was appointed a director in November of 1956.

Q. To whom did you report in 1955 and 1956? A. To Allen Sibley.

* * *

Redirect Examination

Q. (By Mr. Dyer)

* * *

[2063] Q. Now, Mr. Updike asked you concerning this exhibit, General Counsel's F-24. And I think you told us yesterday that DMIED did perform the services on all except the last two items, No. 6 and No. 7; is that right? [2064] A. Yes, sir.

* * *

Q. And if you had had the personnel, you would have performed the service? A. Yes, sir.

* * *

[2067] Q. All right. In response to another question of Mr. Updike, I believe you testified that Deering-Milliken and Co., Inc., did not directly own any textile machinery, is that right? A. Yes, sir.

Q. Can you tell us how you come by that knowledge? A. They have no operating plants.

Q. I see. You know that they have no operating plants as such; is that right? A. Yes, sir.

[2068] Q. Is that the only basis of your knowledge in making that statement? A. Yes, sir.

Q. Now in regard to movement of personnel between mills I think you said there was no movement as such between your department and Deering, Milliken and Co., Inc., is that right? A. That is correct, sir.

Q. Is it true, however, that sales trainees as such for Deering, Milliken and Co. Inc., were sent on trips through the mills and also to talk to the various departments of the Service Corporation to find out how they operated, what they did, and what interest the mills had in the marketing field?

Mr. Updike: There are several questions there.

Mr. Dyer: All right. I will break it down.

Q. (By Mr. Dyer) Do you know whether sales trainees of Deering, Milliken and Co. Inc., made visits to the various mills? A. I know that some did. I am not familiar with that program.

Q. All right. Do you know whether the same sales trainees met with various of the department heads of Deering, Milliken Service Corporation with regard to the functions performed by Deering, Milliken Service Corporation? A. I can speak for myself that I don't think I talked [2069] with over two sales trainees in the entire time that I have been in this capacity.

Q. I think you said that you yourself and various personnel from the industrial engineering department made visits to outside mills; is that correct? A. Yes, sir.

* * *

[2072] Q. I think you have stated that the hours of work at the mills were dissimilar. Can you tell us what you mean by the "hours of work."? A. The number of hours employees worked per week.

[2073] Q. Number of hours they worked per week? A. Yes.

Q. In other words some employees might work 40 hours, some might work 48 hours; and the spare hands would work varying amounts of time? A. Yes, sir.

Q. Can you tell us whether the mills were in 1955 and 1956 all operating on a 3-shift basis? A. That would be quite dissimilar too.

Q. Well, were they all working three shifts a day? A. I don't know the answer.

And you would have to be much more specific and name it by department.

Which department do you mean running three shifts?

Q. You mean that in some of the mills some of the departments in each individual mill would only work one shift; for instance the Cloth Room might work just one shift a day, whereas the weaving room might run three shifts a day: is that correct? A. That is correct, sir.

Q. Well, is it true that in practically all of the D-M Mills the Cloth Room only works on one shift? A. No, sir, it is not.

Q. And how many of them would that be true of? A. I would estimate that it is roughly half and half.

[2074] Q. All right. Now what about the weave rooms? Do the weave rooms—let's confine it to cotton, the cotton plants operating during 1956—were the weave rooms in the cotton mills, the D-M Cotton Mills, running three shifts a day? A. I am not thoroughly familiar with that. I have a recollection that some of the mills did curtail the third shift.

Q. Some did curtail the third shift? A. Yes.

Q. Towards the last part of the year? A. I don't remember exactly when it was.

Q. Would that be on the basis of orders, not having sufficient orders? A. I would assume so, yes, sir.

Q. Now, can you tell us whether the mills, the D-M Mills, operated six days a week or seven days a week? A. That also varies.

Q. Would practically all of them operate on a six-day week schedule? A. No, sir, I can't say that.

Q. You don't know? A. I don't know that, no.

Trial Examiner: If you don't know whether practically all of them are on a 6-day schedule, how do you know that there is variation among them?

The Witness: I know isolated cases where one mill was [2075] only running three days a week. I know another case where a mill was running seven days a week.

Q. (By Mr. Dyer) Would that, again, be determined from the number of orders on hand at the mill?

Mr. Updike: You mean number or volume of orders?

Mr. Dyer: Volume of orders.

Q. (By Mr. Dyer) Can you tell us whether the mills operated on the basis of the basic work week being 40 hours

a week for all the employees; and, naturally, they would be paying time and a half for everything over 40 hours? A. Well, that is the law.

Trial Examiner: That is the law. They would be violating the law if they didn't.

Mr. Dyer: That is true.

Q. (By Mr. Dyer) Was it the purpose of the mills to try to get most of the employees to work on a 40-hour week basis rather than anything less than that? A. That was entirely up to the individual mill.

* * *

Recross Examination

[2076] Q. (By Mr. Updike) To what extent, if you recall, Mr. Lowry, if at all, has your organization recommended to Treasurers that they hire industrial engineering or related services independent of yours? A. In a number of instances, sir.

Q. Can you give us some illustrations of this, please? A. Yes, sir. A number of the mills have retained Allen Mogensen.

Q. Is he the man who was referred to in one of the exhibits yesterday who conducted the classes at Lake Placid, I think, it was? A. Yes, sir.

[2077] A. All right. Any others that have been retained? A. Yes, sir, several. Barnes Textile Associates. Raphy E. Loper, Industrial Engineer.

Q. We have heard of Barnes Textile Associates earlier in this case.

What does Mr. Loper do; or what does that organization do? A. They are a firm of consulting industrial engineers.

Q. Now when these consultants are hired, if you know, who pays for their services? A. The mill who hires them.

Q. And your organization does not do so? A. No, sir.

Q. Now, the other question: Are you familiar with whether some mills, for example, have a day of rest program? A. Day of rest program?

Q. Well, if you don't recognize it, I will not pursue that.

Do some mills rotate their shifts and others run steady on the same shift? A. Yes, sir.

Q. To be perhaps more clear and specific, say one week a group of people would be on an early shift and the next week they might be on the middle shift and another week they would be on the late shift; is that right? [2078] A. Yes, sir. It is commonly what is called "swing shift".

Q. Does this vary from one mill and treasurer to another? A. Yes, sir.

Mr. Updike: That is all.

Further Redirect Examination

Q. (By Mr. Dyer) In regard to the independent services, when they are retained, does the Deering, Milliken Industrial Engineering Department work with the mill and with the independent service in setting out the desired purposes for which the services are obtained? A. Not necessarily, sir.

Q. For instance when Barnes Textiles—Barnes Textile was retained for a survey at Darlington—the industrial engineering department did work with both Darlington and Barnes Textile in outlining the extent to which the survey was to be made; is that right? A. Yes, sir.

Q. And where recommendations were made by the independent textile firm, those recommendations were made with both DMIED personnel and Darlington personnel being present. And the recommendations would be discussed among the group; is that right? A. Not necessarily, sir.

Q. Was that done at Darlington where Barnes made his recommendations? [2079] A. I believe his first recommendation was made only to Mr. Oeland. And then that Mr. Oeland asked if I would come down and review the recommendations with him.

* * *

[2094] (By Mr. Updike) Now, if you will bear with me for a moment, in this it seems to me clear that the burden of proof rests with the Board and with the charging party——

Trial Examiner: With the General Counsel and the Charging Party.

Mr. Updike: Yes, you are quite right.

* * *

[2104] HAL C. BYRD, called as a witness, having been first duly sworn, was examined and testified as follows:

Trial Examiner: What is your full name?

The Witness: Hal C. Byrd.

Trial Examiner: Where do you live?

The Witness: Spartanburg, South Carolina.

Direct Examination

Q. (By Mr. Dyer) Mr. Byrd, will you tell us what your connection with the purchasing department is at Deering, Milliken Service Corporation? A. Purchasing Agent.

Q. You run the purchasing department? A. That is correct, sir.

Q. When did you come with Deering, Milliken Service Corporation? A. I came with the Service Corporation when it was formed.

Q. In other words you had had some connection with purchasing prior to the formation of the Service Corporation? A. Yes, sir.

[2105] Q. Now, can you give us an idea of what the Staff of the Purchasing Department is, how many people are on it. A. We have approximately—well, we have thirteen people in the department.

Q. And can you tell us what the functions of the department are—the purchasing department? A. The functions of the purchasing department are to purchase supplies and equipment for the various mills which we represent as requested by them.

Q. Do you also purchase equipment for the Service Corporation itself and for the Research Corporation? A. Yes, sir.

Q. Are there every any occasions when you purchase equipment for Deering, Milliken and Company? A. Yes, sir.

* * *

[2109] Q. Now, can you tell us the manner by which orders are placed with the purchasing department? A. Yes, sir. The mill first of all makes a decision itself that it needs something. And when that decision is reached, they prepare usually a purchase requisition which is approved at the mill by a part of the management of the mill. In some [2110] mills it is the superintendent. In other mills, it is the manager. And then they forward the requisition to our department for placing the order. And they usually recommend a vendor for which the supply item is to come.

Q. And on occasion, do you recommend to the mills what vendor to use? A. Yes, sir.

Q. All right. And after you have received this requisition, what do you then do? What does your department then do? A. Well, the requisition goes first of all to the appropriate buyer of the item. He takes whatever action is necessary then to procure the item as called for by the mill.

Q. All right. Now, in the case of—for instance, Darlington did some building. They were adding to their weave room. They had an electrical contractor—they were going to have to have an electrical contractor. Now where items of that nature are called for, does a purchase requisition—or does an order of some type go to the purchasing department and the purchasing department put out request for bids? A. Yes.

Q. And what happens there? A. That is actually handled in two ways.

Q. Would you describe them? A. Yes. We may submit requests for quotations and certain items such as, let us say, almost of fixtures for—lamp [2111] fixtures for a new addition, that coming under Mr. White's category of items to purchase. If it is an item of a construction nature such as internal wiring, the details may be worked out by the engineering department with the mill and approved by the mill prior to the engineering department seeking bids or quotations on the work to be done.

Q. Does the engineering department is that instance seek the quotations, or does the engineering department work through the purchasing department to get the quotations? A. Both. They do both.

Q. All right. And when the quotations are received on an item—let's get back to your example of light fixtures—you get quotations from a number of suppliers? A. That is correct.

Q. Would you then make a recommendation to the mill as to which supplier would be best? A. We would usually supply the mill with the information relative to the bids involved. And we would make a recommendation in most cases to accept a particular bidder, not necessarily because of low price but because of the price consistent with the specification of the mills' desires.

This is taking into account also the delivery and the responsibility of the vendor so bidding.

Q. I see.

Now, can you tell us what is the basis—does the [2112] purchasing department charge the mills for this service? A. Yes.

Q. What is the basis of the charge? A. On the dollar volume of supplies purchased.

* * *

Q. (By Mr. Dyer) You mean at the end of the year the volume of purchases is figured up and whatever percentages a mill has in the volume of purchases they are charged that price? A. They are charged a percentage of the cost of the department, yes.

* * *

[2113] Q. Wherever possible do you consolidate purchases at one supplier? For instance, if you have orders from mills, a number of different mills, for one or two particular items, do you attempt to consolidate those orders as one order and place it with one supplier? A. Yes.

Q. In order to obtain the lowest unit cost? A. That is correct.

Q. Now, in addition to making purchases from outside suppliers, are there also purchases that are made from mill to mill? A. There are purchases made within the—there

are purchases made among the mills that we purchase for, yes, or between mills.

Q. Is that mainly in the nature of used equipment; is that right? A. That is correct.

* * *

Q. (By Mr. Dyer) Does the Abbeville Mill maintain a printing plant? A. Yes, sir, they do.

Q. And are practically all of the purchases of stationery [2114] and printing supplies and forms and pads made from the Abbeville Plant? A. No, sir.

Q. What percentage would be? A. I would guess 25 percent.

Q. Is that because of the capacity of the Abbeville Printing Presses? A. That is part of the reason, yes, sir.

* * *

Q. All right. Thank you.

Now, the purchasing department—I think you may have [2115] answered this—handles the sales of surplus equipment and supplies between the mills? A. Would you repeat that?

Q. The purchasing department handles sales of surplus equipment between mills; is that right? A. They do part of the time and part of the time they don't.

Q. In some instances the mills may make an arrangement among themselves, is that right? A. In some instances the mills may actually trade themselves, yes.

Trial Examiner: You mean trade with one another?

The Witness: Trade with one another, yes, sir.

* * *

[2116] Q. (By Mr. Dyer) Would the mills upon occasion notify the purchasing department where they had surplus items which they wished to get rid of? A. Yes.

Q. Would this be an example of an instance where a certain mill has notified the purchasing department that they had surplus items? A. Yes.

Q. And then the purchasing department in turn wrote to the remaining mills saying we have got a surplus, and "do you want it?"; is that the idea? A. That is the idea, yes.

* * *

[2117] Q. (By Mr. Dyer) Mr. Byrd, can you tell us what the Deering, Milliken Service Corporation revolving fund is? A. Yes, sir.

That is a small fund that is set up for the purpose of our having available in the department cash which we can use to make a purchase of a real bargain at an appropriate time.

Q. In other words, where you are quite sure that the mill will eventually use an item that you can get a good buy on it, to go ahead and buy it? A. That is correct, yes, sir.

Q. Who contributed to this revolving fund? A. The revolving fund is contributed to by this Deering, Milliken Service Corporation from the various stockholder mills.

Q. In other words, each of the mills has kicked in a portion to set up this fund; is that right? A. The amount of the—the amount set up in the account of the revolving fund was obtained from the Service [2118] corporation. And just how it was split up, I am not aware.

Trial Examiner: You said it was contributed to by each stockholder corporation?

* * *

Mr. Updike:

* * *

The revolving fund is a fund of up to $10,000 which this witness may draw on from the total funds as contributed, as just stated, for the purpose that he has been testifying to.

Mr. Dyer: Is that ten thousand each year, or what?

Mr. Updike: I guess it is ten thousand at any time—I would assume that if he can use it to get this bargain piece and then sell it later on to replenish his fund, he can then start to use it over again.

* * *

[2119] Trial Examiner: No, General Counsel's G-2. I have the same connection in connection with General Counsel's G-1.

Mr. Dyer: All right.

Q. (By Mr. Dyer) "Before offering these outside the organization we would like to know if the Deering, Milliken mills have any interest."

Was it standard practice before selling such an item to see if any of the D-M Mills wanted it before you would sell it to any outsider?

* * *

Trial Examiner: What about General Counsel's G-1? I think the question at that time related to mills generally. And Darlington was cited as an example.

Q. (By Mr. Dyer) When you state "within the organization, [2120] do you mean the D-M Mills? A. We mean those mills for which we are purchasing.

* * *

Q. (By Mr. Dyer) And those are the stockholders? A. That is correct. The stockholder mills.

* * *

[2122] Mr. Dyer: I now offer General Counsel's G-5 and G-6.

* * *

[2123] Q. How often would you get out a bulletin of this nature? A. As equipment would come up for sale.

Q. In other words, as soon as you were notified by a mill that they had this equipment for sale you would get out a bulletin to the rest of the mills? A. That is the usual practice, yes.

Q. All right. I note on General Counsel's G-6 there is a [2124] reply by Mr. Oeland. Would you turn to that, please?

In this letter to you Mr. Oeland tells you that he is not interested in the two particular spinning frames but he wants something a little bit different. And he asks you to check around and keep them in mind stating, "and we hope it is possible one of the D-M Mills will be replacing frames of this type and we will be able to purchase them."

Is that typical of the reply you might receive from a mill? A. I would say yes.

Q. All right, thank you. A. They may not go into the detail that Mr. Oeland did, however.

Q. Now, where a bulletin is received at a mill and the mill decides to purchase some of this used equipment for another mill, how do they proceed to purchase the equipment? A. Well, now, normally they would contact Mr. Higginbotham and arrange, first of all, for a visit to look at the machinery, whether it was within the organization or within the group for which we purchase, or whether it

would be outside. They would send a mill representative to inspect the equipment.

Q. Let me ask you just at this point: In some cases would a representative from DMIED or DMCR be sent to check the equipment at the request of the mill? A. That is possible, yes.

[2125] Q. All right.

Would you go ahead? A. And after the equipment is inspected, then they would advise Mr. Higginbotham further as to whether or not they were interested in proceeding with the purchase. And he would act accordingly.

Q. Now in some instances where a mill wishes to sell some used equipment but doesn't know what it ought to get for the equipment, would the mill ask you to set up what would be a fair price for the equipment—would it ask your department to set up a fair price? A. They would ask for a price on the equipment or what would be the going market price. And that price would either be given them immediately or established if we weren't perfectly familiar with the market at that time.

Q. All right. And going further with the matter as to the actual purchase by the mill; would the mill who was going to purchase this used equipment from the other mill submit a purchase requisition again and go through the form you have given us before? A. They would either do that, sir, or they would ask Mr. Higginbotham by telephone or by written letter to proceed with the purchase.

* * *

[2127] Trial Examiner: I want to make certain I have this right. I think the witness told us that the purchasing department charges are based on the dollar volume of supplies purchased.

Mr. Updike: Yes, sir.

Trial Examiner: The charges are not based on sales, are they? I mean they are not charged to the seller, the selling mill?

Mr. Dyer: Well, let me clarify that.

Q. (By Mr. Dyer) Are the charges for which the purchasing department makes its charges those where purchases are made outside the organization? A. Yes.

Q. Is there any basis for charges for things bought within the organization? [2128]. A. Yes.

Q. Is there any basis for charges for things bought within the organization? A. It is all handled, sir, on the basis of total supply purchases by the mill. That may include, if the mill purchased anything from within the organization, it would include that figure also, because it would be a supply item to them.

* * *

[2131] Q. (By Mr. Dyer) In General Counsel's G-10, the subject is stated as "Report on Trial Installation of Bahnson Pneumatic End Collection Equipment."

Did the purchasing department arrange for a trial installation at Pacolet No. 4? A. Yes.

Q. And the supplier, Bahnson, arranged to put some pneumatic collection equipment on what, 20 frames? A. Yes.

Q. Can you tell us: Did Mr. Wise write this report which goes on for some five pages and goes into considerable detail? A. Yes, Mr. Wise wrote this report.

Q. Did Mr. Wise have any help in writing this report? A. Yes.

[2132] Q. From Deering, Milliken Industrial Engineering Department and from the Mill? A. Yes.

Q. Now, this item of putting in a trial installation is not isolated, is it?

Is this something that occurs every so often? A. Well, occasionally, yes, we follow an item under test, let's say.

Q. Well, what I mean to say is are trial installations made at other mills, say, five or ten trial installations made at other mills, a year, of various types of equipment?

How frequently would trial installations be made? A. You mean as conducted by our department, sir?

Q. Well trial installations of mills where you have something to do with procuring the trial installation for the mill? A. Trial installations are going on most of the time.

Q. And in most of the cases does the purchasing department have something to do with getting a trial installation set up at one or the other mills? A. We do have something to do with it. And I would like to explain just what that is.

Q. Would you, please? A. We obtain purchase information: the availability, the price, and any other helpful information we can; and we [2133] usually supply that information to DMIED, whose function it is to work with the mill in setting up the trial installation as a usual rule.

Q. Well, would the, let's say, formal correspondence of getting a supplier to set up a trial installation be handled through your department or through DMIED? A. It could be by either or both.

* * *

Trial Examiner: General Counsel's G-11 is received.

* * *

Q. (By Mr. Dyer) Now does this memorandum have reference to a group purchase of Pneumastop made through the purchasing department?

* * *

[2136] Mr. Dyer: Mr. Examiner, I now offer in evidence what has been marked General Counsel's G-12, being a request for quotation form, in this instance dated March 7, 1956. The head note reads: "Deering, Milliken Mills Purchasing Department."

The request for quotation——

Trial Examiner: That is from them?

Mr. Dyer: Yes, sir, that is headed "Deering, Milliken Purchasing Department."

* * *

Q. (By Mr. Dyer) May I ask if this is the type of form used where a mill requests some type of equipment and he wishes to get quotations from various suppliers?

* * *

[2140] Q. Well is equipment loaned on occasion from mill to mill? A. Very rarely. It may be.

* * *

Q. I recall on one occasion—correct me if I am wrong—that some circuit breakers were loaned by Darlington to I believe Pacolet. Is that the type of equipment which would be loaned? A. It may be, yes.

* * *

[2141] Mr. Dyer: Mr. Examiner, I will ask the witness a question in regard to a memorandum which I am handing him addressed to various mill treasurers.

Q. (By Mr. Dyer) This is dated October 13, 1955. Mr. Byrd, would this represent—well, in this memorandum you list various types of equipment which are for sale. Were

these items of equipment those purchased through the revolving fund which you were offering to the mills? A. I believe the Veeder-Root pick counters—well, yes, I believe they are, yes.

Q. And in regard to the Veeder-Root pick counters, did you state "We have optioned the entire lot to one of our competitors subject to prior sale."? A. Yes.

Q. In other words, you were trying to protect—in case any of the D-M mills wanted one, you would sell it to them. And if none of the D-M Mills bought it, you would sell it to a competitor; is that right? A. That is right.

* * *

[2148] Trial Examiner: General Counsel's G-16 is received.

(The document above-referred to, heretofore marked General Counsel's G-16 for identification, was received in evidence)

Q. (By Mr. Dyer) Is this the standard form of authorization for capital expenditure used for all mills?

Mr. Updike: If you know.
Mr. Dyer: If you know, yes.
Trial Examiner: When you say "all mills"——
Mr. Dyer: All D-M Mills.
The Witness: I believe so.
Mr. Dyer: All right.

* * *

[2150] Q. (By Mr. Dyer) Now there is other information requested such as the Service Life when the equipment is new; experimental, et cetera. And at the bottom there is space for approval signatures.

And it shows two lines for the mill with the date. Then a line for DMIED with the date. And then two lines

to the right saying "NY"—"NY" standing for New York —and the date.

Now, the approval signatures at the mill would be by whom, the mill treasurer and the superintendent? A. Possibly, yes.

[2151] Q. And who would the approval signature from DMIED be? A. That would probably there be the head of the department.

* * *

The Witness: That is right, I do not know.

Mr. Updike: I will stipulate that it has to be approved both by the Board of Directors and by Mr. Roger Milliken in any company where he is president. The only exception to that, Mr. Milliken reminds me, is that as occasionally appears at Darlington, the directors themselves will authorize the Treasurer to have a discretionary fund for capital expenditures of, I think, 25,000 or perhaps 50,000 dollars in one of the years in question.

Mr. Dyer: Well, Mr. Updike could we find out right now who the approval signatures in New York would be?

Mr. Updike: Those were there when Mr. Milliken was in New York. They have not been used since he was in South Carolina.

Mr. Dyer: This capital expenditure form is for 1956. You mean the form has not been used?

[2152] Mr. Updike: Not been filled out since he has been down here.

Mr. Dyer: Then the "New York" on this form would refer to the previous time when Mr. Milliken's office was in New York.

Mr. Updike: Yes, sir.

* * *

[2153] Mr. Dyer: That is the point I was attempting to clarify. In other words, it is Mr. Roger Milliken who writes his signature of approval on that form rather than the Board of Directors.

Mr. Updike: Yes, sir.

Mr. Dyer: I will so stipulate.

Trial Examiner: Is it correct to say that the Board of Directors of a mill approved large capital expenditures in advance? As to other expenditures Roger Milliken approved and the Board later ratifies.

I am asking it because I didn't know that I had it right.

Mr. Dyer: My understanding is that the board approves [2154] large amounts, not for specific capital expenditures, but for areas of capital expenditure.

Mr. Updike: For example, the Board may approve $285,000 for new spinning frames.

It may approve $140,000 for new weave room equipment without specifying what it is. That will be an aggregate sum to be spent by the officers, namely, the treasurer and Mr. Milliken as President.

Trial Examiner: The Board approves areas and amounts for capital expenditures in advance. Is that an accurate statement?

Mr. Updike: Yes, sir.

Mr. Dyer: Yes, sir.

Mr. Updike: That is prospectively.

Trial Examiner: Roger Milliken approves, shall we say, specific expenditures which the Board later ratifies.

Mr. Updike: Well the Board may later ratify it if need arose. But if he has already got the authority, the ratification isn't necessary.

Trial Examiner: Well there was some reference to later action by the Board during one of these colloquys.

Mr. Dyer: Yes, sir. I was mistaken. I said it was approved by the Board afterwards. Mr. Updike corrected me that it is approved by the Board in advance.

* * *

[2155] Trial Examiner: General Counsel's G-17 is received.

* * *

[2158] Q. Going to the second page under the third item entitled "Double, Griffin size boxes."

Mr. Oeland states: "We will wait until after discussions on recommendations made by Gaffney and DMIED before purchasing the above size boxes."

Now, is that in reference to a test of size boxes being made at Gaffney with the help of DMIED in regard to finding out what is the best machinery to purchase? A. That was with reference to a test that Gaffney was making on the double Griffin size boxes.

Q. My question is: Is this a part of the testing program that was going on at the various mills about finding out the best type of equipment to buy? A. Yes.

* * *

[2160] Mr. Dyer: I believe the witness has been here during the time of the testimony of Mr. Lowry.

Mr. Updike: Yes.

Mr. Dyer: Mr. Lowry's testimony had reference to a program to test various types of equipment.

Mr. Updike: That is right.

Mr. Dyer: And determine what was best for recommendations of purchasing. It was to that program I referred. And I think it was to that program that the witness answered the question.

Is that right?

The Witness: Yes.

* * *

[2164] Mr. Dyer: Mr. Byrd, prior to the time of the liquidation of Darlington Manufacturing Company, did you send to the remaining D-M mills a catalog for the Darlington sale, the auction sale, asking the mills to review it and let you have a list of items on which the mills wished to bid at the sale?

A. Is this the Darlington sale?

Q. Yes, sir. A. I believe so.

Q. And asked the mills to return the list to you promptly as you would like an opportunity to discuss these with the individual mills prior to the sale? A. That could be, yes.

* * *

[2165] Q. (By Mr. Dyer) Mr. Byrd, did you assist in the preparation of the Darlington Catalog? A. Yes.

Q. And can you tell us who, besides yourself, assisted in the praparation of that catalog? A. The auctioneers. Samuel T. Freeman and Company.

Q. Anyone else? A. Mr. Higginbotham, and Darlington personnel.

Q. Now, in addition to the machinery, I believe the catalog had mainly to do with machinery, did it not?

[2166] A. It had to do with all of the property of Darlington.

Q. Did Darlington have an inventory of supply parts? A. Yes.

Q. That were sold through the purchasing department to the various D-M Mills prior to the auction? A. Some of the supply parts were sold to the mills within the group for which we were purchasing.

Q. Now, can you tell us how that was handled? A. Yes.

We obtained the list of the inventory from Darlington and sent it to the various manufacturers of the supplies as well as the various mills.

And the various mills indicated what they needed. And they were offered to the mills at a slight discount, which we felt would be a better price than they would actually bring at the auction, but were still at a discounted price to the mills and would mean more to Darlington than it would if we had left them at the auction.

Q. And as to the amount of discount, can you tell us who decided on the amount of discount on these items that was to be taken? A. That was arrived at with Mr. Oeland after discussion with him.

Q. Did you give him advice as to approximately what it should be? [2167] A. I may have recommended to him a figure, yes.

Q. Well, do you recall whether you did recommend to him a figure? A. Yes, I believe I did, yes.

Q. Now, as to the actual mechanics, the mills prepared requisitions for these supply parts, gave them to the purchasing department, the department bought the equipment from Darlington, and then invoices were prepared by the purchasing department, and Darlington sent the materials to the mills, is that right?

Is that how the mechanics of this supply of parts sale went? A. I believe that is correct, yes.

Q. Now, were you present at the Darlington Auction? A. Yes, sir.

Q. Now, at the Darlington Auction, there were also personnel present from some of the D-M mills; is that correct? A. Yes.

Q. And can you tell us——

Mr. Updike: "Some persons present from the D-M mills." Now who would they be from? May I ask that?

Mr. Dyer: Let's see if the witness knows.

Q. (By Mr. Dyer) Can you tell us what mills were represented at the Darlington sale, if you know? A. I remember some.

[2168] Q. All right. A. Pacolet Manufacturing Company.

Trial Examiner: What was that?

The Witness: Pacolet Manufacturing Company. Monarch Mills. Gaffney Manufacturing Company. Hartsville Cotton Mill.

Q. (By Mr. Dyer) These are all the cotton mills; is that right? A. Yes, that is right.

Mr. Updike: They are not all the cotton mills. But they are all cotton mills.

Mr. Dyer: That is right. I am sorry.

* * *

[2173] *Cross-Examination*

Q. (By Mr. Updike) Mr. Byrd, do you recall being questioned yesterday by Mr. Dye with respect to the sale of supplies of Darlington prior to the auction, but after the stockholders' vote to liquidate? A. Yes.

Q. Now, will you please tell the Examiner the circumstances which gave rise to that pre-auction sale, please? A. Yes, sir. After it had been decided that the mill was going to be liquidated, Mr. Oeland called me to Darlington to discuss the best ways to dispose of the surplus supplies to obtain the most out of them. And if there was anything that could be done prior to the auction which would result in more money to Darlington, he wanted to do that in the interest of the stockholders.

So, after discussing it, it was agreed that a logical method would be to offer new unused supplies back to the makers of those supplies as well as to the various mills for which we purchased.

[2174] We felt that we would realize—and we did actually realize—about 80 percent of their value in this way. And at the auction, I believe the similar supplies brought about 20 percent of their true value.

Q. What has been your experience in the time in which you have been in the purchasing business with respect to the sale of supplies at auctions? A. My experience has been that after attending many auctions, that supplies always bring much less due to the very nature of the items of having to be segregated, accounted for, and resold into the trade. And the area of obsolescence is never known when a bidder is bidding for those supplies.

Q. Now, Mr. Byrd, I take it, then, that you advised Mr. Oeland that Darlington would receive more by adopt-

ing this procedure that you have just told us about; is that right? A. Yes, sir.

Q. Was there any discussion with respect to cancellation of orders then on hand with suppliers? A. Yes, sir.

Q. Will you please tell us what you did about that? A. Mr. Oeland requested me to cancel all orders possible that were then on the books, so to speak, for Darlington. And this was done. And there were some over a hundred thousand dollars worth of orders cancelled.

Q. Now, with respect to the sale back to the manufacturer [2175] or supplier, how much of that was done if you can recall, in terms of dollars, I mean?

Trial Examiner: Read the question.

(The pending question read by the reporter)

The Witness: There was something in excess of $20,000 sold back to suppliers.

Q. (By Mr. Updike) Can you recall the names of the primary suppliers in this connection? A. I can recall some of them, sir.

Q. Very good. A. Draper Corporation; Saco-Lowell Shops; Whiten Machine Works. They were the major suppliers, sir.

Q. Now what amount in dollars was disposed of by sale to one or more mills selling through Deering, Milliken and Company? A. As I recall, sir, they bought approximately —well, I would say between $2,000 and $2,500 worth.

Q. So that the total of approximately $125,000 worth of these supplies on hand and on order, a hundred thousand dollars worth was the subject of cancellation at no cost to Darlington? A. Yes, sir.

Q. Approximately $20,000 worth was returned to suppliers at a figure of approximately 20 percent off; is that right? A. Between 15 and 20 percent, yes, sir.

Q. And finally 2,500 dollars worth was sold to mills selling through Deering, Milliken and Company? [2176] A. Yes, sir. And I would like to add, sir, that the basis for a discount was settled on the basis that we were offered by the original manufacturers of the supplies.

Q. That was going to be my next question. The price at which mills selling through Deering, Milliken and Company were offered these supplies, what relationship, if any, did it have to the price available from the supplier? A. We first of all determined the amount that we could hope to receive from the suppliers in the form of their offers for these supplies. And then if the discount from one vendor—or the rehandling charge as they called it—was 20 percent, then those supplies from that vendor were offered to the other mills at the same price.

* * *

Q. Now you were also asked by Mr. Dyer with respect to the doing of printing at Abbeville, I think it was. And I think [2177] you testified that perhaps 25 percent of all of the printing for all of the mills which sell through Deering, Milliken and Company was done at Abbeville.

Now, what is the general nature of the printing that is done at Abbeville? A. The type form that Abbeville can produce is a form that is used more or less intra-plant, or memorandum type forms.

Q. And what can you say with respect to the creation or drafting of these forms within each plant? A. Each plant designs its own forms.

Q. And merely has them printed at Abbeville; is that right? A. That is correct, sir.

* * *

[2180] Q. Now, Mr. Byrd, reference was made in the testimony to some lists of used machinery, used parts, that were circulated by you. Do you recall that? A. Yes, sir. By my department.

Q. Or by your department? A. Yes, sir.

Q. And I believe at one point you testified that similar lists were sent around, which you received, by ACMI. Are my notes correct about that? Or is it ITT? A. ACMI.

Q. American Cotton Manufacturers Institute? A. Yes, sir.

Q. What did those lists consist of? [2181] A. They consist of surplus equipment that is being offered by the various member mills of ACMI.

Q. And how many member mills would you say there were in ACMI? Scores or perhaps hundreds? A. I would have to guess, sir. There are several, but I don't know what the membership would consist of.

Q. Well, now, in the practice of your business, do you receive lists of used machinery and supplies for sale from sources—from still other sources—that is, sources other than the ACMI or lists received from the mills who are the stockholders of the service corporation? A. Yes, sir.

Q. From whom in general do those come? A. In general, sir, they come from used machinery dealers.

Q. Now, in the course of the practice of your work, do you from time to time encounter other persons who are engaged in similar functions but are not connected through stock ownership with the people whom they serve? A. You are speaking still of used machinery, sir?

Q. Well, used machinery or supplies or new machinery; whatever the fact may be. A. Yes, sir. From time to time, or actually today there exists purchasing agents who represent a group, usually a large group of mills, that

are not inter-related. . And these agents are known generally as "independent purchasing agents."

* * *

[2184] Q. (By Mr. Updike) Do you recall being asked concerning the loan of equipment by Darlington to some other mill? Do you remember that? A. Yes, sir.

Q. What was the equipment involved in that loan? A. It was, I believe, some type of electrical equipment which Mr. Dyer referred to yesterday. And it was equipment of an emergency nature.

Q. Within the range of your experience, what class or type of equipment has ever been the subject of a loan? [2185] A. Well, actually the only equipment that is loaned between the mills which we represent is emergency type equipment like a generator or maybe some transformer or something of that nature that would cause, let us say, serious trouble if it couldn't be replaced immediately.

And they borrow that type equipment.

Q. Yes, but it doesn't extend to operating machinery or equipment within the mill itself, is that right? A. No, sir.

* * *

[2195] Q. (By Mr. Updike) Mr. Byrd, as a result of Mr. Dyer's request to me during the recess, did you total all of the invoices on supplies which were sold to your stockholder mills by Darlington in the so-called pre-auction sale? A. Yes, sir.

Q. And have you found that the estimate which you gave in your testimony of between 2000 and 3000 dollars was incorrect and too small? A. Yes, sir.

Q. And what is the total as you have just computed it by adding the invoices? A. Approximately $7500.

* * *

[2199] T. D. TRULUCK, called as a witness, having been first duly sworn, was examined and testified as follows:

Trial Examiner: What is your full name?
The Witness: T. D. Truluck.
Trial Examiner: Where do you live?
The Witness: Union, South Carolina.

Direct Examination

Q. (By Mr. Dyer) Mr. Truluck, you are head of the cotton department; is that correct? A. That is correct, yes, sir.

Q. And in your capacity, can you briefly describe what the functions of that department are? A. The functions of that department are to secure the raw cotton for the group of mills, for the mills that we represent as agents.

* * *

[2202] Q. And do you keep informed as to the various rulings of the Agriculture Department and the Senate and House Bills which are being considered? A. We try to keep up with all the information that has any bearing on cotton and cotton qualities and what might affect the prices and qualities and so forth.

And I might add that that information is constantly delivered to our various mills. The treasurer and manager of those mills.

* * *

[2203] Q. (By Mr. Dyer) You are familiar with what the—let's go back to 1956—you were familiar with the

general type of cotton that Darlington wished; is that right? A. Yes, sir.

Q. And if you saw some cotton in the market that was the type Darlington used, and you could get it at a good price, would you go ahead and so do without consulting Darlington [2204] first? A. No, not unless I had the instructions from Darlington Manufacturing Company to buy a certain amount or certain quality of cotton.

Q. Well, did you at times receive blanket instructions as "We want cotton to run so long; buy it"? A. Yes.

Trial Examiner: I think that last question was directed to the amount or quantity that Darlington would want?

Mr. Dyer: Yes, sir.

Trial Examiner: Would there be any instructions concerning prices?

Q. (By Mr. Dyer) Would there be advance instructions concerning price that you wanted within a certain range? A. Yes, sir.

Q. You would be in contact with the mill and tell them what the market price was and that all they could expect would be so and so; is that right? A. That is right.

They made the final decision as to whether we would pay that price if it was any different from any instructions I had previously.

Q. Where you saw cotton that you knew the mill could use at a bargain price, you would pick that up, wouldn't you? A. Not unless I had instructions or orders from the mill.

[2205] Q. Well, I mean blanket instructions? A. Yes, that came within my instructions, yes.

Q. All right.

* * *

[2207] Can you tell us what the pre-classing procedure is?

* * *

A. The pre-classing procedure is this: We have classed the cotton on the sample on which we have purchased it before the bale was shipped. And we have furnished the mill with that information prior to the bale arriving, so that when it does arrive that they know exactly what to do with it.

Q. All right.

What is the information you obtain from this classing? A. We obtain the grade and the staple.

Q. And the length of the staple? A. Right.

Q. Do you obtain any other information with regard to it? A. Yes. We obtain some information that we get from instrument classing.

* * *

[2208] Q. Well what I am asking you is: Was it part of your procedure of your pre-classing procedure? A. Yes it normally is.

Trial Examiner: What is?

Mr. Dyer: To give these laboratory results.

The Witness: To give the grading—it is normally our procedure to give the gradings, the staple, and the micronaire reading.

Q. (By Mr. Dyer) Can you tell us what a micronaire reading is? A. That determines the diameter of the fiber.

Q. All right. What other information? A. We have tensile strength test which gives you the strength of the fiber.

Q. Do you have any other information from the laboratory tests? A. We have some other tests, such as we test

for the alkalinity, which is cavitoma, we call it, which we think is some organism that gets into the fiber, and can do some damage.

[2209] Q. Do you also give a reading as to spinability? A. Yes.

With all of the characteristics we are able to identify, those things with our experience show us that that bale normally and usually will perform well in a certain end product.

Q. All right. Now, this information is taken for each bale of cotton. A. Some of it is spot checking.

Q. Where you have large lots; is that right? A. Yes. Some of it is individual bales.

Q. All right.

And copies of this information are sent to the mill so that the mill will have the information when the cotton arrives? A. They have the preclassing information, yes.

* * *

Q. All right. Does the cotton department maintain a record of this? A. Yes.

* * *

[2210] Trial Examiner: General Counsel's H-3 is received in evidence.

* * *

Q. (By Mr. Dyer) Now, the information that is shown on here is prepared at the cotton department's office at Union, South Carolina, is that right? A. Yes, sir.

* * *

[2212] Q. All right, now, would the mill superintendent tell Mr. Boyle, for instance, the mix you have given us is

running fine; let's keep that mix; or that the mix isn't running fine; can you change it in some way? A. That quite often happens, yes.

Q. All right.

Now how often are these blends, the cotton mix memoranda, sent to the mills? Is it weekly? A. No. As a change is necessary.

Q. Well you can tell whether a change is necessary from the inventory? A. Yes.

* * *

[2216] Q. Now, I direct your attention to the heading of this letter. It says: "Cotton and Cotton Waste Department, Deering, Milliken, Union, South Carolina."

And I note that at the bottom of the page is the legend "Division of Deering, Milliken Service Corporation."

Is this your standard letterhead form, or memo form? A. This is a standard memo form for our cotton department, yes.

[2217] Q. Now reference is made to the cotton waste department. Can you tell us what that department does? A. The waste department has charge of or are agents for the selling of the waste for the cotton mills.

* * *

[2225] Q. (By Mr. Dyer) Now, when Darlington started its switching process you had in the meantime bought a larger stock of cotton, had you not? A. That is right.

Q. And there was some that was in the futures market, that right? A. Yes. They were as I recall short some futures. They were involved in the futures market.

Q. And there was some that had been bought and was warehoused at the Cotton Blossom? A. Yes.

Q. And some which would have been left at Darlington? A. Yes.

[2226] Q. Was there Darlington Cotton in any other place? A. There was some cotton they had committed themselves for which had not been delivered.

Q. All right. Were you asked to liquidate the cotton? A. Yes.

Q. And can you tell us the procedure you used in going about it? A. We put this cotton up for bids. That is the cotton—well let's divide it into two categories. Let's first talk about the cotton that had not been delivered to the mill.

Q. All right.

You say cotton which had not been delivered? A. Which had been bought but had not been delivered.

Trial Examiner: It was on its way?

The Witness: That is right.

Q. (By Mr. Dyer) It hadn't reached Cotton Blossom yet? A. Yes. Or it could have been not due for shipment yet. We will talk about the undelivered portion.

Q. All right. A. This cotton, we proceeded to see what kind of a cancellation price we could get from the parties who had sold the cotton to Darlington.

We also advertised for bids on that cotton on the conditions under which it had been purchased. The shipper we felt realizing that Darlington was going to liquidate [2227] made us a cancellation proposition which I didn't think was the true value of the cotton. So I passed that information on to Mr. Oeland.

So then we went out, offered the cotton out, to some other mills and some other shippers. The prices that they offered us I still felt wasn't the value of the cotton.

So I again talked to Mr. Oeland. I said, let me take another turn at this thing and see what we can do, because I feel like the cotton is worth more money.

So I offered this cotton to Gaffney, to Mr. Norton, and to Mr. Sibley. I said I am acting as agent for Darlington Manufacturing Company; if you are interested in the cotton, this is what Mr. Oeland and I feel like the cotton is worth.

Trial Examiner: This was to whom; which mill?

The Witness: Monarch Mills, Mr. Sibley.

Mr. Updike: And Gaffney?

The Witness: And Gaffney Manufacturing Company; Mr. Norton.

And the prices which we offered the cotton to those two mills for was higher than any bid we had received from anybody else to buy the cotton.

And Mr. Norton and Mr. Sibley, after thinking the thing over, said they wanted to buy the cotton. So then we sold them that cotton at that price. And that was a price at which the shipper who owned the cotton was willing to cancel [2228] out at.

In other words, the shipper, to cancel out, wanted us to pay them some money to cancel the contract, you see.

But by negotiating we were able to get that cotton high enough—somebody else would buy it high enough so that the shipper who owed the money to Darlington was willing to cancel it out without any charge.

* * *

[2229] Q. (By Mr. Dyer) You bought the cotton originally at thirty-eight. The shipper was willing to cancel out initially at what price? A. Say 37½.

Q. And you went to other outside mills and asked them for bids and they gave you bids of 37½ or 37.60? A. Yes. And lower.

Q. And then you went to Gaffney and Monarch? A. Yes.

Q. What bids did they give you? A. They were willing to give us the bid that the shipper wanted to cancel——

Trial Examiner: Thirty-eight.

[2230] The Witness: Thirty-eight cents.

Trial Examiner: The price you were to pay the shipper?

The Witness: That is right.

Trial Examiner: All right.

Q. (By Mr. Dyer) What then did you do? A. We cancelled Darlington with the shipper. And we drew contracts with the shipper to Darlington—I mean to Gaffney and Monarch for the cotton which they had bought.

Q. In other words, as far as the money was concerned you cancelled out Darlington and $37.50 and got the——

Mr. Updike: No. It was cancelled without penalty.

Trial Examiner: Darlington just stepped out of the contract and the cotton was now sold to Gaffney and Monarch?

Mr. Dyer: All right.

Q. (By Mr. Dyer) How about the delivered cotton? A. The delivered cotton we offered it for bid. And we had about the same results as to prices for that cotton.

Q. You offered it to outside bidders for bids? A. Yes. In other words the prices that we had that cotton offered

out for were less than what we considered the cotton was worth.

With a shipper buying it, you expect that; because if they are going to buy a product to resell they expect to make a profit.

Trial Examiner: Are we speaking of cotton at Darlington?

[2231] Mr. Dyer: Inventory cotton in their possession, yes.

Mr. Updike: At Cotton Blossom?

The Witness: The prices we got there from some shippers and some mills, not ours.

The Witness: To be exact, it was Lowenstein's group of mills and some others.

There again we didn't feel that we were getting enough out of the cotton. We didn't feel the prices we were getting for the cotton were good enough. We talked to Mr Oeland. And we decided "Well, let's see if Monarch and Gaffney are interested in this cotton."

And I said, "I think this cotton is worth about a half a cent a pound more than the highest bid we have had on it so far."

So he said, "Go ahead and see what you can do."

So we finally sold the rest of that cotton to Gaffney and Monarch. There may have been another mill involved that got a little of it. I am not sure about that. But the records are available on all the transactions, and so forth. And as I recall, we got slightly over $2 a bale more for that cotton by Monarch and Gaffney buying it than we got on any bids that we received.

So we felt that we had gotten the full value out of liquidating Darlington's stocks of cotton.

* * *

Cross Examination

* * *

[2247] Q. Now, I show you General Counsel's Exhibit H-1, which is a report by you dated August 16, 1956 of about a little over three pages, addressed to the Treasurers of the mills [2248] utilizing cotton. And I ask you how often did you report to the Treasurers who were interested in cotton of that fashion? A. Quite often. If I got information that I thought that they ought to have that was valuable to them, why, I passed it on to them.

Many times I passed this information on to them by telephone. But we were constantly keeping him supplied with information that we picked up that we thought was pertinent to their operations, and so forth.

Q. All right.

Now, does some of the information in that exhibit pertain to grades or qualities of cotton that would be of interest only to some of the treasurers? A. That is correct.

* * *

[2249] Q. (By Mr. Updike) Now, who originally determined the mix that appears in H-3, sir? A. Who proposed this mix?

Q. Yes, sir. H-3 involves a modification, as I understand it, of an existing mix. A. Yes.

Q. My question to you is: Who, if you know, set up the original mix. A. I would say that Mr. Boyle and Mr. Goodwin.

Q. Working together? A. Working together, yes, set up the previous mix, as they did this one.

Q. And as a matter of practice, is that how the cotton department worked with Darlington, for example? A. Yes, sir.

We worked not only with Darlington, but each mill that we represented. We worked in an advisory capacity, making recommendations. We didn't and we don't have any authority to push our thinking or actions over any treasurer. I mean that [2250] is his responsibility. We can only suggest, recommend and discuss these things with them.

Q. I see. A. Many times they take our suggestions, and many times they don't.

Q. In spite of your efforts, I take it? A. Right.

Even though I still think they are wrong at times.

Q. Now, as between the cotton purchasing department on the one hand and let us say Hartsville, would the mixes be substantially different? A. Oh, yes.

Q. Would that likewise be true with respect to Monarch and Gaffney? A. Yes.

* * *

[2265] Q. (By Mr. Updike) Does the cotton department, or did it at any time, ever purchase any cotton on—just on its own account? A. No, sir.

Q. Its purchases are always made for some specific act of some specific mill treasurer or mill? A. That is right.

Q. Now, Mr. Truluck, you were asked some questions with respect to the disposition of cotton in stock—that is, in the inventory at Darlington—and as well on hand at Cotton Blossom?

And I ask you if you caused to be prepared a statement showing the disposition of every bale of Darlington's cotton [2266] at those two places during the month of November, 1956.

I will amend my question to say: During the course of the liquidation of Darlington. A. Yes.

Q. Now, can you tell us from that, from whom you received bids with respect to—— A. We received bids from Anderson-Clayton and Company.

Q. That is one of the concerns you mentioned a little earlier in your testimony? A. Yes, sir.

Cotton shipper or merchant.

Q. Anyone else? A. We received bids on portions of this cotton, certain qualities, from Lowenstein, Cotton purchasing Department, which is Lowenstein Mills.

Q. Yes.

By the way, when you say certain portions of the cotton, did you invite a bid on all of the cotton? A. We invited bid on all of it.

Q. And they elected to bid only on certain portions; am I correct about that? A. Yes, sir.

Q. Please continue, sir. A. We received bids from Volkart Cotton Company. They are also shippers.

[2268] Q. I believe you told us that after receiving those bids you were of the view that you were not being bid the full value of the cotton? A. Yes.

Q. And did you thereafter, having consulted with Mr. Oeland, endeavor to sell the cotton, or offer the cotton to some of the mill treasurers for whom you act as cotton purchasing agent? A. Yes, sir.

Q. And does that sheet of paper before you reflect the prices that were thus offered? A. Yes.

Q. Now, what can you state with respect to whether the offers thus received were in excess of any offers from Anderson-Clayton, Lowenstein and Volkart.

I think those are the three names you have given us? A. You say was the prices we received for the cotton in excess of any of these other bids?

A. Yes, sir.

Q. Yes, it was in excess?

Mr. Updike: The witness has a memorandum in his hand which details all of these transactions. I will be glad either to offer it in evidence or give it to Mr. Dyer for his examination, whichever is preferred, sir.

Mr. Dyer: I would like to see it.

[2269] (Document handed to Mr. Dyer)

Trial Examiner: We will take a five-minute recess.

(Whereupon, a short recess was taken.)

Mr. Updike: Mr. Examiner, Mr. Dyer has expressed the wish that this schedule of figures be offered in evidence. And I accordingly ask that it be marked Respondent's Exhibit H-5.

Trial Examiner: Is that what you referred to before as a disposition of every bale of Darlington's cotton?

Mr. Updike: Yes, sir.

* * *

[2272] Q. Now, with respect to the practice of hedging, who decides whether to hedge, and if so, how much, as among the mills which you represent in the purchase of their cottons? A. Each mill treasurer makes his own decision.

Q. Now, does he have your advice with respect to that decision? A. Yes, sir.

Q. With reference to the years, let us say, 1955, 1956, [2273] to what extent did the mill treasurers from time to

time go along with y[illegible] advice or disregard it? A. You mean what percentag[illegible] it?

Q. Your batting average, I would say.

Trial Examiner: Batting average with the mill treasurers?

Mr. Updike: Yes, sir.

The Witness: Oh, I would say 50 percent; maybe 60. Some mills a higher percentage, perhaps some a lower percentage.

Q. (By Mr. Updike) Now at any given moment, sir, with respect to future purchases of cotton, what would you say as to the uniformity or lack of uniformity in the positions of these respective mill treasurers? A. There is practically no uniformity whatsoever.

* * *

[2275] *Redirect Examination*

Q. (By Mr. Dyer)

* * *

Q. Has the cotton department bought a good number—or bought a lot of cotton from Anderson-Clayton? A. You say have we?

Q. Yes. A. At times, yes.

Q. In 1955 and 1956 you bought a lot of cotton? A. We bought some.

Q. Did you obtain micronaire readings from them? A. I don't know that we did. I can't answer that.

Q. Is there a service that would cost some more money? A. My recollection is that we bought it with certain micronaire specifications.

Q. You mean they sold it to you as guaranteed to be within certain micronaire specifications? A. Yes.

Q. That doesn't mean you accepted that without making your [2276] own micronaire specifications? A. We never accept anybody's without making our own. I might say that many other shippers do the same thing that Anderson-Clayton does. They are not an exception. We just used them.

Q. Actually although they guarantee it to be within certain specifications you still check it? A. Yes.

Q. And would you know whether other purchasers outside of Deering, Milliken Service Corporation check the micronaire readings as given out by a shipper such as this? A. Other mills doing buying.

Q. Other mills outside of those—well, other purchasers besides yours. A. Whether they check the cotton?

Q. Yes. A. I understand that some of them do almost bale for bale. Some of them do some spot checking.

Q. I think you stated there are companies that do classing for mills. By that do you mean just the grade and staple or do you mean the complete laboratory check that you make? A. If you are referring to the one I mentioned with Jones, Gardner and Beale?

Q. Yes, I am. A. They do the entire operation, including the buying and [2277] classing and the lab work.

Mr. Updike: Is that lab work meaning laboratory work?

The Witness: Yes. In many instances. I don't know it is done in every bale that they have. But in a good many mills I know they do.

Q. (By Mr. Dyer) And for the lab work, which we call it, do they charge extra to their purchasers? A. Well, I

don't know that they charge more. It would certainly cost you more to handle the cotton.

Having to run it through the lab would cost more.

Q. Would it be your presumption that they would charge an extra percentage for this service? A. I would guess so.

* * *

Recross Examination

[2285] Q. (By Mr. Updike) I just want to clarify one thing with respect to Respondent's Exhibit H-7.

You have testified, Mr. Truluck, to the wide range of non-uniformity as between the treasurers with resp to their bought-up position—is that the way to express it? Am I using the right terms? A. Yes, that is all right. Or we would say "cotton coverage."

Q. Cotton coverage. All right.

Now, a further decision for these treasurers to make was with respect to whether they should or should not hedge with respect to that widely non-uniform position. Is that correct? A. That is right.

[2286] Q. And do I understand that when your memorandum say, as it does in the fourth paragraph on page 2, that "We are all pretty well in accord with our thinking", that that statement in context refers to a general accord with respect to not hedging on those positions, is that right? A. That is correct.

Q. I have one final question.

Did you ever have anything to do—did any member of your department to your knowledge ever have anything to do with the labor relations as at Darlington?

Mr. Dyer: Objection, sir. This calls for a conclusion of the witness. The term "labor relations" is something that needs quite a good bit of defini-

tion, and to take the witness' definition of what is meant by "labor relations" is something I think that should not be inquired into at this time.

Mr. Updike: I will ask a different question then.

Q. (By Mr. Updike) Did any of your activities or the activities of any one in your department bring you in contact with the hourly paid employees at Darlington? A. No.

Q. (By Mr. Dyer) Back to Respondent's Exhibit H 7 for just a moment.

Did you attend the sales meetings in New York, sir? [2287] A. The——

Q. I refer now to the last paragraph on page 2. "I am asking that we all get together for a few minutes at the sales meeting in New York and discuss this and decide what policy we should set up and follow." A. Yes, I think I attended that sales meeting.

Q. All right. When you refer to the policy that should be followed, is that the policy on hedging? Or is that the policy on long-term buying? Which is it? A. Well, "policy" might have been probably a word that it would have been better not to use.

What I had in mind was that we get together and discuss these things and decide whether we should buy more cotton, which mill should buy it, which mill wanted to buy it, which mill wanted to hedge. It was a kind of a follow-up of the survey that I made with the various treasurers to see what they wanted to do.

* * *

The Witness: Let me read that paragraph.

Trial Examiner: Is that the fourth paragraph?

Mr. Dyer: Yes.

Q. (By Mr. Dyer) "I think all of us would like to keep [2288] a hedged position if we felt like such was possible. With the futures market selling under the loan prices we haven't been able to figure where we would have anything like a hedge for any of our purchases."

"We of course could maintain an even position but this doesn't mean that it is a hedged position."

Q. The questions you raise and point out here as to what could happen in the future, was that what you referred to in talking about the "policy we should set up and follow"? A. I think all of this would finally be determined by just how much cotton that we bought up here.

We are actually just looking into the future to try to see what we feel like is perhaps the best thing to do. We haven't actually done any of these things.

You see, this is September 15th. The crop, with the exception of the Texas Valley, which is just a few hundred thousand bales, will hardly begin to move until October, November and December. So what we are doing here is just turning over in our minds the various possibilities, trying to come to some decision as to maybe which way we ought to move.

Q. Is that what you mean by "policy" in that statement? A. Yes.

Mr. Dyer: Thank you. That is all.

* * *

[2289] Q. (By Mr. Dyer) Mr. Truluck, I hand you this letter which was addressed to you from Mr. Oeland dated October 15, 1956. This letter refers to the liquidation of the cotton at Darlington; is that correct? A. Yes, sir.

Q. And in this letter Mr. Oeland states to you that he had discussed the question of the liquidation of the cotton

with Mr. Milliken. And Mr. Milliken was very anxious that you, Mr. Truluck, go over this with him before any action was taken.

Did you discuss the liquidation of the cotton at Darlington with Mr. Milliken? A. Yes, sir.

Q. Thank you. A. I would like to add to that——

Mr. Updike: May I ask what the conversation was with Mr. Milliken?

Mr. Dyer: He is your witness.

The Witness: On receipt of that letter I called Mr. Milliken on the telephone. And he said to me something about [2290] like this: "I want to be sure that you get every penny that you can get for Darlington's inventories. And I want to be sure that you get outside bids in order to liquidate this stock."

That is about the sum and substance of the conversation.

* * *

HARRY DEFORE, called as a witness, having been first duly sworn, was examined and testified as follows:

Trial Examiner: What is your full name?

The Witness: Harry Lee Defore.

Trial Examiner: Where do you live?

The Witness: 203 West South Street, Union, South Carolina.

Direct Examination

Q. (By Mr. Dyer) Are you in charge of the fiber quality control and research department? A. I am.

Q. And that is set up as a separate department now rather than being included under the cotton department, is that correct? [2291] A. That is correct.

Q. And when was it set up as a separate department? A. It was set up about June, 1955.

Q. Now, can you give us a brief outline of the duties of the Fiber Quality Control and Research Department? A. The basic work of that department is concerned with assisting the mills with whom we are associated in achieving the optimum efficiencies from their raw materials, their machinery, and their personnel. A. Can you tell us how you go about achieving the results? A. The tools which we use in that program are fiber research, fiber quality control, processing research, processing quality control, product improvement, product development, and related items.

Q. Now, can you tell us just where the responsibility of your department ceases and that of Deering, Milliken Research Corporation takes up? A. The Deering, Milliken Research Corporation is primarily—they have been and still are to the best of my knowledge primarily related to synthetics, especially filaments. Also in their development work, they go into chemical modifications.

We in our department are pretty well occupied with cotton to the greatest extent, even though we do cover staple synthetics as a precaution that if the market should require blends of cotton and synthetics, or a hundred percent [2292] synthetics, then we shall all be fully informed so that the mills which are primarily cotton mills, can swing over to the types of fabrics which the market might require.

* * *

Q. (By Mr. Dyer) You do some quality research on the fiber itself; is that right? A. That is correct.

Q. And what do you term "fiber"? How far along in the process of making yarn would you still refer to the cotton as "fiber"? A. In evaluating fiber properties or fiber qualities, we have to, in effect, carry it all the way through the greige mill manufacturing, with consideration also given to its finishing properties.

Q. Well do you take samples of the cotton at various stages of its processing at a mill? A. We have had two projects that would require sampling throughout as you speak of.

Q. Can you tell us how that is done? A. How the sampling is done?

Q. Yes, sir. A. In one of the projects which is called "weekly Stock [2293] in process tests," each mill that wishes to participate in this project is requested to send in to us a sample from each of the bales which comprise one mix per week as taken from the bales which are open and are in their opening room. And in addition to that, they are requested to send in to us six random samples of finisher drawing sliver. And those are analyzed in the laboratory from the standpoint of all factors which we know influence quality, processability or dyeing characteristics.

Q. Now, you say this was a program? Or what did you determine it? A. I called it a project. For the mills who wish to go along with it, it is a routine and continuing thing which is repeated every week.

Q. Did most or all of the D-M Mills submit their samples to you, to your department? A. Initially I believe that all of the cotton mills with whom we are associated did send samples in. There are some that did not wish to continue with that information, and so they requested that it be discontinued.

Q. In other words you just discontinued it as to them? A. That is correct.

Q. And after making the analyses which you have stated, did you make a report on these analyses? A. Yes. That goes back to each mill weekly.

[2294] Q. Is this called a "periodic yarn test summary"? A. No. This is called "Weekly Stock in Process Tests."

Q. What is the nature of the report? Does it list all the mills on one report or just an individual mill? A. It is an individual report to each mill which is participating.

Q. Would that report indicate the trend which that mill is taking with regard to the quality of the fiber? A. It indicates the level, and it indicates the trend, and it indicates a number of other things which we think are of value in order to assure good performance and good quality at the end.

Q. Well are there data from previous weeks also listed on the chart so the mill can tell whether its quality is going up or down? A. Not in the report which goes to the mills. It is our recommendation that each mill keep its own data charted.

In this department, it is maintained that way. For each mill there is a continuing record of results.

Q. Now, what can you tell us about the yarn test summaries? A. That is another project which we have wherein random samples of yarn of current production are selected by mill people and are sent in to us each month.

They are analyzed for all of the pertinent quality characteristics.

[2295] A. And at the end of a quarter or a six-months period, comparisons are made among all of the participating mills in one report.

Now, each mill gets its own report once a month. But there are some comparisions which are made up quarterly and semi-annually.

* * *

Q. (By Mr. Dyer) You said participating mills. Did all of the D-M Mills and Cotton Mills participate in this yarn testing? A. Yes. All of the associated mills on cotton do participate.

Q. In addition to the summary, were trend charts of individual mills attached to the copy of the summary going to the mill showing the improvement or retrogression in the mills' quality of yarn? A. That is correct.

Trial Examiner: You mean each mill gets a report on each of the others; on each of them?

The Witness: No. These particular charts which are referred to are attached only to the report going to that [2296] specific mill.

There is a further comparison which is made, which is made in tabular form which is sent to all mills that do participate.

Q. (By Mr. Dyer) The summary itself to which the chart is attached does show the information as to what the quality of the yarn is? A. That is correct.

Q. Now, does your department also make periodic yarn twist surveys? A. It does, yes.

Q. And what are those surveys designed to find out? A. Those surveys are designed to inform the mills as to two things: Their processing efficiencies, which may be correctable. Also it points out to them the added cost which they have in their plant because they are having to use twists, yarn twists, which are in excess of what we may call a "standard", what we know can be done with the cotton that they are using.

* * *

[2297] Q. What I am saying is: From the report, can the mills compare themselves against the standard and against each other? A. That is correct.

Q. Now does your department also issue——

Trial Examiner: Is that the report which enables them to make those comparisons sent to each of them?

The Witness: Sent to all that participate.

Q. (By Mr. Dyer) Does your department issue periodic bulletins on the quality out-turn of cotton purchases? A. It formerly did.

Q. You say "formerly did". What do you mean "formerly did"? Before it was separated from the cotton department? A. No it has been discontinued. I think it was in operation at the period we are speaking of, 1955-1956. I don't recall the exact date that it was discontinued.

Q. Can you tell us what the report showed——

Trial Examiner: What report is this?

Mr. Dyer: Report on the Bulletin of Quality Out-Turn of Cotton Purchases.

The Witness: We had set up guides as to the rating we would give the Quality level of each purchase, that being based on all fiber properties which we consider important [2298] other than grade, staple and growth which are handled in manual classing.

And this report was to see degree to which we were improving the selectivity of cotton which we were getting. That was the purpose of it.

Q. (By Mr. Dyer) Can you tell us exactly what departments would benefit from such a report?

Would the cotton department itself benefit from the report? A. Would the cotton department itself benefit?

Yes, I think they would.

Q. And can you tell us how the mills would benefit from this report? A. Yes. Because those properties are important to the mills from a standpoint of processing efficiencies and costs and quality.

But those fiber properties do not constitute an element in the determination of price so long as they are within practical limits. In other words, we were far ahead of conventional cotton merchandising practices. And if we could select our cottons with desirable properties in these respects without having to pay a premium for it, then we would have a competitive advantage over those mills which did not have that information or did not use it.

Q. Turning to the research side of your department, would [2299] an example of the research which your department does be, for instance, on the removal of the oil from the cloth? Would that come under your department or would that come under the DMRC? A. Well, that in reality is a very small thing. But we feel that whether anything is specifically delegated to us or not, if we have information which can be of benefit to the mills with whom we are associated, it is our duty and obligation to bring it to their attention.

* * *

[2300] Trial Examiner: General Counsel's I-1 is received in evidence.

* * *

Q. (By Mr. Dyer) Now, Mr. Defore, did the Fiber Quality Control and Research Department act as the liaison between the various mills and ITT?

[2301] Mr. Updike: You mean in respect of this subject matter?

Mr. Dyer: Yes.

Trial Examiner: To the what?

Mr. Dyer: In respect to the subject matter listed here.

Mr. Updike: Other testimony from other witnesses in different connections.

Mr. Dyer: Yes.

The Witness: In this particular matter we do act as a clearing house.

Q. (By Mr. Dyer) Now the mills listed to the left of the first page, are these the mills which are the member contributors associated with Deering, Milliken who are members of the ITT? A. Yes, that is correct.

Q. Is the Deering Milliken Service Corporation as such a contributing member? A. It is not.

Q. I note that the Fiber Quality Control is listed. Is your department a contributing member? A. It is not. And for that reason. You will notice that any expenditure which is chargeable to that department is in parentheses, because there is no fund against which these charges can be applied.

Q. In other words, how does your department pay ITT for the services it performs? [2302] A. Normally we would have to pay for it in cash. However, when Darlington was liquidated, they were members and they had reserve funds there which were unexpended.

And those funds, according to the regulations of the institute, can not be rebated. Therefore, we asked Mr. Oeland for permission to use the unexpended Darlington funds after liquidation to charge our work to insofar as they would go. That permission was granted.

Q. On the second page, I note that this invoice is addressed to Deering, Milliken Service Corporation from ITT for various tests run at ITT; is that correct? A. That is correct.

Q. And this would be handled by your department; is that right? A. Now, what do you mean by "handled"?

Q. For instance, when the invoice came in, it would be turned over to you or your department; is that correct? A. That is correct.

Q. And how would you or your department go about paying the invoice? A. We would pay the invoice out of our funds. And then we would turn around and bill each particular mill for the work which they had requested and which the Institute had made a billing on.

Q. Now, going to another point, where information is [2303] received from ITT on the various projects as requested by the individual mills, is that material going directly to the mill or does it come through your department? A. It does go directly to the mill, and we generally get a copy of it.

* * *

Trial Examiner: General Counsel's I-2 is received.

* * *

[2305] Q. Now in your memorandum in the last sentence of the first paragraph, you state "A knowledge of statistics through charting will be needed by these men, but you have been furnished statistical manuals for this purpose."

Can you tell us what these statistical manuals are? A. Yes. Those are manuals of statistical procedures with

specialized applications in the textile industry. This manual was developed in our department. And they were supplied to each of the mills with whom we are associated as well as other departments of the service corporation.

* * *

[2306] Q. (By Mr. Dyer) Now this letter of Mr. Oeland's is in reference to Mr. Milliken visiting him; and Mr. Oeland states, referring to Mr. Milliken: "He is very anxious for us to consider the purchase of some Rieter warp spinning frames to fill in some spare floor space in our card room. We plan to purchase around 5000 spindles. He suggested that I contact Jesse Jackson, as Jesse had recommended the purchase of this type frame for Laurens."

"He further stated you were making some tests in your pilot plant of this type of equipment."

Can you tell us what your pilot plant consists of, sir? A. Our pilot plant consists of small numbers and usual samples——

Q. Small numbers? I didn't get that? A. Small numbers of and usual sample sizes of yarn manufacturing equipment similar to that which is used in mills.

Q. And do you perform tests on this type of equipment to see what the outcome of the cloth will be? A. Of the yarns.

Q. Yarn or whatever it would be, yes? A. Yes. We use that in processing research to establish the capability of the machines and how to get the maximum from them.

Q. Now, the results of your experiments with this pilot plant, I take it, are made available to all of the D-M mills; [2307] is that right? A. All of the mills with whom we are associated, yes.

Mr. Updike: That would be the Cotton Mills. Am I right about that?

The Witness: That is right. All of the cotton mills.

Mr. Dyer: All of the cotton mills?

The Witness: Yes.

Mr. Dyer: Thank you.

Q. (By Mr. Dyer) He goes on to state: "We would appreciate very much your bringing us up to date on where the matter stands and your opinions to this type of spinning against Saco-Lowell and Whitin.

"Our preference would be to get either the Saco-Lowell or Whitin as we have frames in the middle of these two makes and do not want to add a third make unless it is a good move. On the other hand as you know it is useless to tell Mr. Milliken this if he gets his head set."

(Discussion off the record)

Q. (By Mr. Dyer) Do you every so often get requests from the mills as to what your equipment shows would be the best—well my question is misphrased.

Do you get requests like this one from Mr. Oeland from the other mills? A. Oh, yes. They ask our opinions on anything related to the areas of coverage we make.

[2308] Q. And in this instance, he is asking your opinion on the type of spinning frame; is that correct? A. That is right.

Q. Where a new type of equipment comes on the market is such new type of equipment purchased for your pilot plant? A. Not as a matter of routine. If we feel that there compelling reasons why we should have it, then we will put in a request for it.

Q. When you say "put in a request for it", do you mean you will make a requisition to the purchasing department to purchase it for you? A. Well we would have to get approval there for that capital type of expenditure.

Q. Who do you get approval from for capital expenditure? A. From me that would go to Mr. Lowry and perhaps he would consult Mr. Milliken on that.

Mr. Dyer: Those are all the questions I have, sir.

Cross Examination

Q. (By Mr. Updike) Mr. Defore, do you know whether despite Mr. Milliken's getting his head set, whether these frames were recommended or ever bought? A. The Rieter frames were not bought.

Q. Were not bought? A. That is right.

* * *

[2313] Q. (By Mr. Updike) Mr. Defore, have you been in this work either with the Deering, Milliken Service Corporation or with the Cotton Department for about ten years or more? A. Yes, sir.

Q. During that period of time—and directing your mind specifically—well now I withdraw that.

Well, directing you specifically to the years 1954, 1955, 1956, have you made as a result of your research many recommendations to specific mills with respect to changes in their procedures or their number of twists and some of the things that you have told us about here today? A. Yes, sir.

Q. What would you say your batting average was with respect to your recommendations? [2314] A. Unfortunately I would have to put it around 40 to 60 percent, in that area.

TABLE OF CONTENTS

	PAGE
Decision and Order of National Labor Relations Board	1
Opinion of Boyd Leedom	34
Opinion of Philip Ray Rodgers	35
Intermediate Report and Recommended Order (1957)	44
Intermediate Report and Recommended Order (1959)	86
Supplemental Report and Recommended Order (1959)	101
Second Supplemental Report and Recommended Order (1962)	234
EXCERPTS FROM TESTIMONY	
Boyd E. Payton:	
Direct	249
Redirect	259
James P. Mozingo, III:	
Direct	260
Cross	267
Redirect	268
James M. Oeland:	
Direct	268
Direct	492
Direct	1144
Cross	1188
Redirect	1214
Lawrence Wilson Cook:	
Direct	302
Cross	307
Mrs. Elizabeth Johnson:	
Direct	312
Mrs. Nettie Whitley:	
Direct	315

PAGE

Forrest A. Campbell:
Direct 317

John Benjamin Plummer:
Direct 319

Eli Welch:
Direct 321

Corbin Andrews:
Direct 324

Mrs. Allen Gainey:
Direct 324

Mrs. Oleen Garrison:
Direct 326

Rayford Carnes:
Direct 329

Mrs. Marion Gainey:
Direct 333

John B. Floyd:
Direct 336

Maude T. Grant:
Direct 338
Cross 341

Margaret Truett:
Direct 341

Charlie L. Frazier:
Direct 342

Mary Elizabeth Baker:
Direct 344

Abbie Baxton Jacobs:
Direct 347

Jessie P. Harrelson:
Direct 348

PAGE

Harry O'Neal:
Direct 354

Chesley H. Lloyd:
Direct 356

Geneva Elmore:
Direct 358

Dorothy Welch:
Direct 360

Newey Lee:
Direct 361
Cross 363

Miriam W. Johnson:
Direct 364

F. L. Hutson:
Direct 365

Maggie Reed:
Direct 367

Melvin Benenhaley:
Direct 369

Eugene McDaniel:
Direct 370

Frances Lenora Boan:
Direct 372

Douglas Taylor:
Direct 374

Grace Truett:
Direct 375

Charles Kelly:
Direct 377

Nora Lee King:
Direct 379

	PAGE
Mrs. Marie Truett:	
Direct	384
Viola Weatherford:	
Direct	384
Roger Milliken:	
Direct	387
Cross	436
Recross	465
Redirect	473
Recross	475
Redirect	479
Direct	968
Cross	1130
Cross	1216
Redirect	1236
Willard A. Goodwin:	
Direct	480
Cross	485
Redirect	485
Hugh Campbell:	
Direct	486
David K. Shirley:	
Direct	487
Thomas Marion Baker:	
Direct	495
Cross	495
William A. Hammond:	
Direct	496
Cross	496
Frank Kinsey:	
Direct	497
Cross	498
Dewey Cox:	
Direct	500

PAGE

Albert E. Hutchinson:
Direct 501

Shirley Passmore:
Direct 503

Troy J. Tobias:
Direct 503

Giles C. Kinsaul:
Direct 504

Minot K. Milliken:
Direct 513
Cross 576

E. Eliot Miller:
Direct 591
Cross 626
Recross 628

Charles W. Kable:
Direct 630
Cross 652
Redirect 653

Paul J. Wilson, Jr.:
Direct 655
Cross 678
Redirect 682

Kenneth M. Lowry:
Direct 682
Cross 720
Redirect 723
Recross 727
Redirect 728

Hal C. Byrd:
Direct 729
Cross 748

	PAGE
T. D. Truluck:	
Direct	753
Cross	762
Redirect	766
Recross	768
Harry Defore:	
Direct	771
Cross	782
Sterling L. Smith:	
Direct	783
Cross	820
Russell Hudson Bush:	
Direct	824
Cross	831
Robert W. McCullough:	
Direct	833
Redirect	864
Charles Gibbs Johnson:	
Direct	866
Cross	916
Redirect	923
William R. Phillips:	
Direct	927
Cross	947
Redirect	965

Q. And does it vary from—shall we say from one treasurer to another? A. Very much.

* * *

[2323] STERLING L. SMITH, called as a witness, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Where do you live?

The Witness: Greenville, South Carolina.

Direct Examination

Q. (By Mr. Dyer) Mr. Smith, can you tell us what your position is with the Cost Department of Deering, Milliken Service Corporation? A. I am the Manager of that Department.

* * *

Q. Can you tell us when you came with the Cost Department? A. When the Service Corporation was formed. And prior to that in 1948.

Q. You say prior to that in 1948. Did you perform some similar functions to the functions performed by the Cost Department prior to the formation of the Service Corporation? A. Yes, sir.

Q. Can you tell us generally what the duties and functions of the cost department are? A. Your questions, I believe, refer to this period 1954, 1955 and 1956?

Q. Yes, sir. A. At that time?

Q. Yes, sir. A. The functions at that time were essentially three. First what I would describe as an "old-fashioned efficiency expert". Second, the "design and installation of improved cost accounting methods" in those mills which were interested in that. And third, some work in

connection with quality controls for some of the mills which had been interested and asked us to work on that.

* * *

[2325] Trial Examiner: General Counsel's J-1 and J-2 are received.

* * *

Q. (By Mr. Dyer) Now the figures for these reports came from all of the D-M Mills; is that right? [2326] A. Yes, sir.

Q. Now, the figures, as such, from the mills, do you furnish the mills with forms on which to set up and set forth those figures? A. You are referring to this particular report?

Q. Yes, sir. A. We sent them a typed letter of request for information with an extra copy with space for them to fill in the information requested and send it back. It was not a printed form.

Q. This was done for both years—this was done from both of those reports which you have before you; is that right? A. Yes, sir.

Q. All right. And in your request form to the mill, did you set forth how you wanted the information set up?

In other words, breaking it down into various categories? A. Yes, sir.

Q. Now, referring to General Counsel's J-1, the 1954 Annual Labor Turnover Report, I note that the mills are broken into three groups: Cotton, Rayon, and Woolen Mills; is that right? A. Yes, sir.

Q. Now, can you tell us what the purpose of these reports [2327] are? A. Labor turnover, of course, is important as bearing on costs of operating a mill. And the Treas-

urers wished to compare their experience with these other mills. Of course they also got information from such sources as the National Industrial Conference Board and other outside entirely independent sources to compare to see how they were doing with all other types of operation.

Q. I note both reports are addressed to all personnel managers. Would that be all personnel managers at the D-M Mills? A. All those mills which had personnel managers or people who functioned as such, yes, at the individual mills.

Q. And also a copy of the report went to Mr. C. G. Johnson. Is Mr. Johnson the head of the placement department of Deering, Milliken Service Corporation? A. I believe so. Yes, at that time he was so.

Q. And also copies went to Mr. Lowry and Mr. Roger Milliken? A. Yes, sir.

Q. All right. Now, in the first paragraph of General Counsel's J-1 you refer to the net separations showing improvement from 26.7 percent in 1953 to 23.8 percent in 1954 despite an 8.1 percent reduction in personnel.

When you speak of net separations, does that include all the mills in that figure? [2328] A. Yes, sir.

Q. You go on to say that seven mills show an increase which is more than accounted for by a net reduction in personnel.

Can you explain to us just what the figures mean?

When you say "reduction in personnel", what do you mean by that? A. Well, if a mill started the year with a thousand employees and for whatever reasons ended the year with only 900 employees, they obviously must have had a separation of one hundred employees. They couldn't possibly have less than that figure.

Q. All right. And that is the reduction in personnel at the mill? A. That is right.

Q. Now, then, the annual labor turnover figure of 26.7 and 23.8 would be the other separations where people have been replaced; is that right? A. No, sir. What we meant by net separations was total separations including certain exclusions which were listed on this attachment.

Q. Can you tell us what those are? A. Returns to school of high school or college students employed purely during the summer time, and those people who entered military service, either by draft or volunteering.

[2329] The Treasurers considered those exceptional items that they couldn't hope to cope with and those were subtracted to arrive at a net figure.

Q. I take it, then, that the figure that is remaining, the 26.7 in 1953 and the 23.8 in 1954, excludes those two categories you have just mentioned? A. That is correct.

Q. And would bring the—then the balance would be people who have been separated at the mill, either fired or laid off, and have been replaced; is that right? A. Without consideration to whether they are replaced or not, people who have left for any other reason except these two listed reasons.

Q. In other words, people who were fired or who quit? A. Fired or quit. Or laid off.

Q. Now, in the third paragraph, you state "This is the first time we have shown a figure of reduction in personnel which is a net reduction after excluding transfers."

Now what transfers do you have reference to? A. Well, at Johnston Mill——

Q. Are you referring to the exhibit? A. No. I am trying to answer your question by example.

Q. This is from your memory? A. Yes, from my memory.

At Johnston Mill, which is the weaving mill of the [2330] worsted group, they had greige cloth examiners. The management of that group decided that it might be better to have the greige cloth examiners at the finishing plant for the same group. And so they transferred that function from one mill to another; and of course in numbers of people they transferred those jobs.

Then, of course, whether the individual people chose to move from one mill to another, one location to another, was a matter of their own choice.

Q. Can you tell us whether the mill and the finishing plant are located near one another? A. What was the question.

Q. Is the particular mill you are speaking of and the finishing plant located near one another? A. They are about 60 or 70 miles apart, something like that.

Q. You state that you show this figure to be a reduction in personnel where it is read, and it is to be subtracted from net separations; and where it is a—where it is black, there has been an increase.

In other words some mills had reduced their personnel but others had increased? A. Yes, sir.

Q. You note from the exhibit that the colors do not come through on the exhibit. With the figures is there any way [2331] what the difference in figures are from this exhibit? A. You might by the department of color, but not with assurance.

Q. All right.

Now, you continue: "The improvement, after allowing for personnel reduction, has been particularly marked at—". then you name Darlington, Gaffney, Monarch group.

Pacolet group, all rayon mills, and Hatch. You state that the only "mills continuing with a figure over 20 percent net separations"—then you name some 7 finishing companies.

Can you tell us what the 20 percent figure means? A. The treasurers had more or less agreed—there was nothing formal about it, but they had more or less agreed. That 20 percent was a reasonably good rate of turnover.

Q. Was that a goal to be shot at? A. Not really. It was just a rough guide.

Q. All right. A. Let us say they felt that if they were much over 20 percent they were not doing very well. But quite a number of them for years have been much below that.

Q. Now, can you tell us whether you suggested the figure of 20 percent? A. I can tell you. I did not.

Q. Who did, sir? A. I believe it originated with one of the—with a man at the time who was treasurer of the woolen group. But I [2332] wouldn't swear to that.

Q. All right.

As to the figure being adopted by the mill treasurers, did you support that figure as a reasonable goal? A. It wasn't for me to support or not to, Mr. Dyer.

Q. All right.

Did you give any advice or information on that to the Treasurers? A. I agreed it made good sense, yes, sir.

Q. Turning to the back page of General Counsel's J-1, you gave cotton mills, woolen mills. You give total figures.

Mr. Dyer: I did not mean page 1. I mean the second page, the attached page. The fold-out page.

Q. (By Mr. Dyer) There are totals given for the mills as to groups? A. Yes, sir.

Q. And the figure for the cotton mills as a percentage of net separations is listed at 18.5. That would be in the sixth column to the right; is that right? A. Yes, sir.

Q. Can you explain a note under the rayon mills? Under the same column you have some figures and then a letter after the "A". Likewise under the woolen mills you have some figures, again in the same column with the designation "B" after it. Can you explain what those are? [2333] A. What the letters signify?

Q. Yes. A. In the first paragraph of the letter we say seven mills marked "A" show an increase——

Q. Excuse me. Is that the reference? A. Yes, sir.

Q. Pardon me. I didn't connect those two? A. Yes, sir.

Q. Turning to General Counsel's J-2——

Trial Examiner: I think Exhibits J-1 and J-2 were described on the record as you spoke of as attachments.

Mr. Dyer: Excuse me. The page was folded over.

Trial Examiner: I thought so too at the time. I wanted to mention this so that anyone who reviews the record won't be looking for something else and thinks something is missing.

Mr. Dyer: That is right. And it is actually a double page.

Trial Examiner: In other words it is a single attachment.

Mr. Dyer: Yes, sir.

Trial Examiner: I sympathize with anybody who hasn't read the case and looks for something that doesn't exist.

Q. (By Mr. Dyer) Turning to General Counsel's J-2, the memorandum page, you state that the 1954 report showed a 23.8 percent net separations. The exclusion of Lockwood [2334] Duchess adjusts this 22 percent."

When you say "—when you exclude Lockwood Duchess—", is that on the basis that Lockwood Duchess had been liquidated? A. They had ceased operation in the course of 1955, yes.

Q. In the second paragraph you state: "1955 is virtually the same at 22.3 percent. But actually there has been some retrogression since there was only a 3.3 percent net reduction in personnel in 1955 compared to the 8.1 percent in 1954."

Could you explain that for us a bit? A. Well, with a large reduction of personnel, as I explained earlier, you must have a separation of at least that number. Therefore, the larger the reduction in personnel, the larger the tendency for a high figure of total separations.

In 1955, there was a smaller reduction in personnel which left an easier job to hold down the separations.

Q. You talk about total separations. But isn't this designed to show net separations? A. Yes. Recalling that the net excludes the returns to school and military service, which are not controllable; or at least the treasurers considered them not controllable.

Q. Now, you continue in the memorandum in the third paragraph stating "1955 performance was rather mixed—11 mills showing improvements when all facts are considered, the other 15 being somewhat worse. Three mills marked "A-A" show an improvement in the net separations and their improvement [2335] is real after taking account of the personnel reduction in the two years.

Eight mills marked "A" show an increase in the percentage in net separations but this is accounted for by an increase in the personnel reductions.

"Another point of significance is that 12 mills marked 'X' show more than 20 percent net separations less personnel reduction. These are the mills which appear to have more to work on, and we perhaps should be concerned that this number 12 compares with only 6 for 1954, after eliminating Lockwood."

Now, in pointing to the 12 mills, can you identify what the problem was at those 12 mills which you say they have to work on? A. No, I can't identify the problem, sir.

Q. Well, generally what is the problem? Is that that they are having too many separations without enough consequent reduction in the number of personnel? A. No. It is merely that their separations percentage was high; and since they were trying to get it lower, they had work to do.

Q. All right.

Now, did you offer them assistance in that work, sir? A. Yes. And sometimes they accepted the offer.

Q. All right. And what type of assistance would you offer them in that regard? [2336] A. Suggesting that they from experience elsewhere and with other mills—suggesting that they try to transfer workers from one department to another within the mill instead of, as they so often did, laying off some workers in one department, where the personnel was being reduced because of change of styling or something of that sort, while at the same time hiring people from outside in another department. And pointing out ways and means which I had seen used elsewhere whereby they could transfer people out of one department by making—by shifting several jobs—making several changes

possible by shifting one person from the spinning department to the weaving department, thereby avoiding displacing people so they could provide greater job continuity.

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[2337] Trial Examiner: General Counsel's J-3 is received.

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Q. (By Mr. Dyer) Mr. Smith, can you tell us what you mean by "overhead labor"? A. The term was coined by someone in the organization to describe the labor which—salaried labor and certain hourly paid labor jobs which tend to remain fixed regardless of the volume of production.

Q. All right. And you state "The attached report shows that actual personnel continues to increase by slightly more than warranted by the increase in style variety, installed equipment, and volume."

Can you tell us how you arrived at this conclusion? [2338] A. This is an extremely difficult class of labor to measure. And the mill treasurers felt themselves extremely fortunate in being able to have comparative information from other similar mills to help them in dealing with their own mill problems: And we tried to develop yardsticks by comparison of the figures from the different mills to measure the, shall we say, comparable cost of these items.

And using these yardsticks very rough, we would arrive at the conclusions the best we could. And from that comparative measurement we would arrive at an opinion of this nature.

Q. Well, in getting to this ultimate conclusion, the information you would have to have would be what the style variety was at each of the mills; is that right? A. Yes. Certain information of that nature.

Q. You would have also to know what the installed equipment was and what the volume each mill was producing was? A. Yes, sir. In broad terms, yes, sir.

Q. All that information was supplied to you by the mills shown on the fold-out page? A. Yes.

Q. And this includes all of the cotton mills, does it not? A. That is right. Many trade associations in the country accumulate information.

Q. You list on the record—well let me ask first: This memorandum page, the figures given under the various [2339] categories of supervision, i.e., and lab, and office, are those the—well you also list another one "hourly."

What is "Comparable hourly."? A. Well, it is the hourly paid jobs in this category which are considered to be comparable. You will note below there are a few—there are two categories which we set out separately because they are not considered to be comparable. The mill situations were so radically different in those respects that there seemed to be no basis of comparison.

Trial Examiner: Where does that "comparable hourly" appear?

The Witness: It is in the legend on the first page.

Mr. Dyer: The legend on the first page, sir.

Trial Examiner: Thank you.

Q. (By Mr. Dyer) Well does this embrace the supervisory personnel who would go into the overhead?

Or would "comparable hourly" mean the hourly supervised paid people? A. No it means hourly categories of jobs as listed on the second page.

Q. Could you point out—— A. The bottom half says "Hourly overhead labor".

Q. Hourly overhead labor would be those jobs shown on the second page? A. About 15 types of jobs, yes.

[2340] Q. All right. And the first column of figures—excuse me. The first group of figures on page 1, the memorandum page, is the summary of all of the mills; is that right? A. Yes, sir.

Q. And in this you show——

Mr. Updike: Summary of all the mills reported——.

Mr. Dyer: On page 2?

Mr. Updike: Yes, on the extension sheet.

Mr. Dyer: Yes.

Q. (By Mr. Dyer) Now you show current—maybe I had better have you explain what these figures are.

First you have "Actual"? A. That is the actual number of people that they had on those jobs.

Q. And then you show "Current over and under." A. "Over" meaning the number by which the actual exceeded the comparative figures or the bench mark figure at the individual mill; or "Under" would be under that.

Q. Well, you say "bench mark figure." Do you mean by that a goal which has been set for each of the mills? A. Well a comparable level of cost as nearly as we could determine it. It wasn't a goal. It was merely some sort of a comparable level of cost.

Q. Well, was one established for each mill and then one for a group total? [2341] A. We established as best we could a formula, if you will, which said—for example, let's take the general office; you might have one accountant required for the mill for the general accounting records, and

then so many clerks per thousand invoices issued, and so many per thousand orders received, and so on.

And then by counting up the orders and invoices and a few other things of that sort at a mill, then you apply that formula and say according to this formula you would have required so many people. And against that you had so many actual. And if you apply that same formula to the different mills, then you would see how much each one stands compared to that formula.

As I explained we all knew it was very rough, but it was some attempt to profit—it was an attempt for each treasurer to profit by the experience of his fellow treasurers. If one man was living up to that formula—I say living up to it—if one man was exactly incurring that formula and somebody else was 20 percent over, well the man that was 20 percent over would feel that probably he had a chance to make some reduction there to get as good a level as somebody else was actually doing. We felt it had some practical benefit to him. That he could probably learn by the other's experience.

Q. All right.

[2342] You mention two other sub-categories which show on this memorandum page: "Special Order."

What would that encompass? A. Well, if they were rearranging or moving a weave room, for example, that is abnormal to the mill's regular operations, then they would have a large number of people required for a short period to do that special order as they call it.

Q. "Large Village" refers to what? A. At that time a few of the mills owned large villages, which was quite general in the textile industry. And most of the mills had few houses, if any. But a few had large villages. And

they had some labor working on keeping the streets clean and repairing them.

Q. All right.

Now, the third column in this first group says "Including December versus 11-30-54. A. Increase or decrease?

Q. Oh, increase or decrease, excuse me. Versus a prior time; is that the idea? A. Versus the last previous report.

Q. All right. And then can you explain the next one. The next one is "Increase or Decrease due to."

And then you show "Actual Personnel." A. Well, the increase in that actual personnel is where the increase was due to an increase in the actual number of [2343] people employed.

And then the other column "Competitive Basis", as we call it was a result of a change either in the style variety or the installed equipment which changed the bench mark figure at the individual mill.

Q. Now, the last group of figures you have a heading; "The overall position of the mill is—" and then you give the mills with their various figures; is that right? A. Yes, sir.

Q. Now, can you tell us——

You show a group total for some six mills. Can you tell us what those six mills are? A. Lockhart, Monarch, Otteray, three plants of the Monarch Mills Corporation, of one corporation. We had a sub-total there. Gainesville, New Holland and Pacolet are three mills of the Pacolet Manufacturing Company, and we have a total.

In each of those cases one man was Treasurer over the three mills. But he had his individual mill superintendents or managers.

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[2344] Trial Examiner: General Counsel's J-4 is received.

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Q. (By Mr. Dyer) Mr. Smith, can you tell us who Mr. Barrett is? A. He was the Cost Accountant at Darlington Manufacturing Company employed by them.

Q. I note that the subject of this is labor complement. This of course means the number of people in the labor force at Darlington; is that right? A. Yes, sir.

Q. Now, in this first paragraph, Mr. Barrett states "In discussing our labor complement yesterday—".

Was that in a discussion with you or the personnel at the mill? A. I don't recall. From context, I take it it is purely the mill personnel.

Q. That "It was noticed that the personnel assigned to the sweeping task has been increased over previous reports, particularly in our carding and spinning departments."

The reports he speaks of were reports made to you, sir?

[2345] Q. (By Mr. Dyer) Is that right? A. Yes. The reports which are the basis for this.

Q. How often are those reports made, sir? A. There were no set dates. Generally three or four times a year.

Q. He continues: "In talking with Mr. Goodwin concerning these cleaners, it is understood that the increased number have been added on a semi-temporary basis in an effort to return the mill to a cleaner basis during the present period of major machinery changes in the mentioned departments."

Can you tell us: The report indicated as such in this, would those have reference to the overhead labor report? A. It would be the information they sent to us for preparation of this, yes, sir.

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[2346] Trial Examiner: General Counsel's J-5 is received.

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Q. (By Mr. Dyer) Now the subject of this memorandum is stated as "Overtime Premium". Your first paragraph says: "We recently asked all mills to report on overtime practice in connection with holidays."

Then you say: "This can be summarized as follows:" In what connection was this request for information made of [2347] the mills? A. Some individual Treasurer or Treasurers—I don't recall the specific individuals—become interested in this problem at his own mill; he asked me if I knew what the other mills did, and I said I didn't; and he asked me if I would collect the information. And several others were interested in it.

Q. All right. A. It was no repetitive report, but merely a collection of information.

Q. In this you set out the practice for all the mills on payment of overtime premium? A. No, sir.

Q. Excuse me? A. I didn't set out a practice. I reported what the individual mill did.

Q. When I said "set out the practice," I mean you set out in this memorandum the information that was sent to you? A. Yes, sir.

Q. In other words this is a summary of that information? A. Yes, sir.

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[2349] Trial Examiner: General Counsel's J-6 is received.

* * *

Q. (By Mr. Dyer) Now according to the first paragraph of this memorandum—well let me state this first.

The subject is stated as "Pay for college trainees and for supervisors not on salary."

You then start the first paragraph "Some time ago I was asked to determine the legally permissible methods of payment for these employees which provide minimum guaranteed weekly income, which hold additional payments for overtime work as low as possible, and which do not require inclusion of these employees in the retirement plans."

When you refer to "plans", what other plans are there besides the Deering-Milliken Mill's Retirement Plan? A. Well, the service corporation employees are in—well I don't recall which plan; but I don't believe they are in the same plan as the mills. I know there are more than one plan and I don't know the details of it.

* * *

[2350] Mr. Updike: It is my understanding of the facts, sir, that although each mill and each separate corporation approves separately the particular benefits applicable to the people in that corporation, for the purposes of investment the plan has the overall designation of "Deering, Milliken Mills Retirement Plan."

Trial Examiner: You say for purpose of investment?

Mr. Updike: Yes, sir. In other words the payments are all made to one trustee who does the investing of the monies.

Mr. Updike: For completeness, I add that Deering, Milliken Research Corporation has a wholly separate plan that does not fall under the general designation that I just stated on the record. And that likewise Deering, Milliken and Company,

Inc. has a wholly separate retirement plan, each with a separate trustee.

Mr. Dyer: Thank you, sir.

Trial Examiner: Now that statement is accepted as a fact for all purposes, then?

Mr. Dyer: Basically I would say yes, sir. The only question I may raise is as to whether the mills themselves operate in a more or less uniform basis in regard to this plan.

In other words, that the benefits which are set up at the various mills and approved by the various mills under [2351] these plans, most if not all of them go along and approve practically the same benefits.

Q. (By Mr. Dyer) Now to get back to this paragraph, Mr. Smith, can you tell us who asked you to determine the legally permissible methods? A. Some one of the treasurers. I can't recall which one. Maybe several treasurers.

Q. Do you thereafter set forth a summary of the available plans which can be used by the mills to achieve the end you mentioned? A. As best I could learn them.

Q. Following this first memorandum is there a fully —is there a full discussion of each of the plans on the four pages attached? A. Yes, sir.

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Trial Examiner: General Counsel's J-7 is received.

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[2352] Q. (By Mr. Dyer) Now, Mr. Smith, this memorandum is entitled "Fixer Section Supplies Report, Cotton, 12 weeks to 11-30-55."

Was this report, or similar reports to this, gotten out on the basis of every quarter? A. Roughly, yes.

* * *

[2353] Q. Was it something that had been decided upon to be done [2354] as a recurring thing by your department? A. Well, the Treasurers of these several mills had decided they wanted this comparative information prepared several years previously. And they would occasionally reconsider to decide whether they still wanted to have it prepared or discontinued.

In fact not long after this, it was discontinued.

Q. You say "several". It is addressed to Cotton Mill Treasurers? A. Yes, sir.

Q. Were all of the cotton mill treasurers in on this report? A. Yes, sir.

Q. And they also submitted information from which you got out the report? A. Yes, sir.

One of them was a late-comer to it; he hadn't been in from the beginning.

Q. Now, can you tell us what the purpose of this report is? A. Yes, sir.

The purpose is to get as much—for each treasurer to get as much help as he could to help him and his superintendents and supervisors to control and reduce this major item of cost.

We would get information for them from outside—from any possible sources as well as these comparable mills.

[2355] Q. You talk about cost. Is this memorandum addressed specifically to fixer section supplies?

This memorandum, I take it, is addressed specifically to the cost which would be incurred for fixer supplies? A. That is correct, yes, sir.

Q. Can you tell us what you mean by "fixer's supplies"? A. These are the supplies used in the weave room by, and largely under the control of, the loom fixers.

* * * *

[2356] Q. Now you also show a line as "goal". What is that? A. That was purely a bench mark figure, a synthetic figure, built up from the best figures attained by the individual mills in the past.

Q. Excuse me. I am sorry I didn't get that. A. It was a synthetic figure built up from the selected best attainments of the individual mills in the past.

Q. In other words that was your figure, was it? A. Yes, sir.

That is I assembled the data for it.

Q. All right. And this is a summary of all of the cotton showing where they were in relation to the general mill objective and to the goal; is that right; this particular chart on the first page? A. I don't think it would be accurate to say the general mill objective. More correctly the total of the individual mill objectives.

Q. The total of the individual mill objectives as divided by the number of mills gives you this mill objective; is that right? A. Well as a percentage figure it is essentially correct, yes.

Q. All right, now. In the paragraph below this chart, it is stated "It remains to be seen whether this was a temporary [2357] increase brought about by the preventive maintenance program and from which future large gains will result."

Q. Did your department have anything to do with the preventive maintenance program? A. No, sir.

* * *

Q. (By Mr. Dyer) Was there a preventive maintenance program being installed at all mills?

Mr. Updike: You mean all cotton mills? This is confined to cotton mills.

[2358] Q. (By Mr. Dyer) Let's limit it first to cotton mills? A. I think each treasurer had set up a preventive maintenance program at each mill.

* * *

[2359] Q. Now all this information was sent to you by each of the mills, is that right? A. The underlying information, yes, sir.

* * *

[2360] Q. (By Mr. Dyer) What mill did not report these figures? A. At this time all of the purely cotton mills reported. But the Lockwood Mill only started reporting relatively recently. They didn't initially.

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[2361] Trial Examiner: General Counsel's J-8 is received.

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Q. (By Mr. Dyer)

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[2362] The average you speak of of 45 percent in that second paragraph, what does that have reference to? A. The average percentage for the total of all nine mills.

* * *

[2364] Mr. Dyer: I am trying to change it to the fact that: Did each mill treasurer say he would like to install such a standard cost program at each of the mills?

The Witness: Each mill treasurer did say so, yes, sir.

Mr. Updike: If he didn't have one already.

The Witness: Yes, if he didn't have one already, that is right.

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Trial Examiner: General Counsel's J-9 is received.

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[2365] Q. (By Mr. Dyer) Mr. Smith, is this a letter written by you after the Treasurers had agreed to install such a program in their mills? A. This is a letter written by me after each of the individual treasurers had indicated that he intended to install the type of cost system we recommend.

Q. You start off "I am ashamed that I lost the thread of my thoughts yesterday and failed to include two things I most particularly wanted to say."

Was this a private discussion between you and Mr. Milliken, or what? A. No. This is when I was—this refers to the meeting the day before when I had talked to the several treasurers and other gentlemen about this recommended cost system.

Q. Was that a quarterly treasurer's meeting? A. No. It was an ad hoc meeting to discuss this particular subject.

* * *

Q. Was the meeting called specifically for the purpose of discussing the standard cost program? A. Yes, sir.

Q. In your next paragraph reads: "I have to be thankful to Bob Edwards."

Tell us who Bob Edwards is? [2366] A. He was the treasurer of Abbeville Mills.

Q. Did Abbeville Mills have a cost program? A. Yes, sir.

Q. "For his initial interest and unwavering confidence in the fundamental value of this type of management tool and in my ability effectively to adapt it to the special circumstances of the various Deering, Milliken Mills."

In other words Mr. Edwards was the first one to take up a suggestion from you that a cost program should be installed? A. Essentially that, yes, sir.

Q. You go on:

"Probably if you know that Bob Edwards built the Johnston and McCormack cost system strong enough to emerge from a period of great abuse as useful tools for George Asnip and Ted Rice. And Ted, not a cost man at the time, was able to do such valuable work at Gerrish Milliken and then carry this on in the worsted group because he could refer to Abbeville as a practical example."

In other words, the idea of the cost program, once you got someone interested, spread to other mills; is that right? A. Very slowly, yes, sir.

Mr. Updike: Let's say spread to some of the other mills.

The Witness: It took six years to get it to spread very much.

* * *

[2369] Would you turn your attention to General Counsel's J-11. This is a reply from Mr. Oeland to you concerning some of the information in your letter, is that correct? A. Yes, sir.

Q. Mr Oeland states he appreciates your letter. And in the second paragraph he stated: "We are very anxious to work with you on the proper timing of this change. [2370] We have Mr. C. L. Watford who presently is handling our accounting here who feels that he could take on some additional duties. Previous to his being placed, in charge of the accounting, he worked with Mr. Barrett on cost and knows something about this work. It is my opinion that if we could secure a competent girl capable of doing stenographic work, that we would be better strengthened in our organization than if we hired an additional man. This person could take off of Mr. Watford the paying of all invoices and could keep most of the routine books. Mr. Watford in turn can take over the responsibilities Mr. Barrett is handling on cost. This would free Don Barrett to work with your department in installing the new program."

Did you discuss further with Mr. Oeland the arrangement he suggests in regard to personnel. A. I can't say positively. But probably, yes.

Q. Well do you know whether any conclusion was reached? Was any reached as to how the personnel situation with regard to cost would be handled? A. I don't recall exactly what was done. I don't believe, however, that anybody was hired.

Q. Well let me ask if this is correct: Before installation of the cost program in Darlington could be started with a man from your department, Darlington was liquidated? Is that correct? A. Yes. A very small start was made prior to that.

[2372] Q. Now, did other mills make similar requests such as Mr. Oeland made concerning what the cost would

be in installing the program as far as personnelwise, as to your part of the program? A. Quite a few did, yes, sir.

Q. And did you give them information such as you gave Mr. Oeland as to what probable costs would be? A. Yes, sir.

Q. Now in line with setting up this program, was it necessary to redefine the organizational set up at the various mills?

In other words a table or organization?

Was it necessary where personnel would be added to set up a new table of organization at the mills? A. In some mills it appeared desirable to recommend that they make some rearrangement in their organization for doing this job effectively.

Q. Turning to General Counsel's J-12.

In the fifth paragraph on the first page, you state:

[2373] "While we are marking time, so to speak, waiting for the availability of qualified men, I will be working on certain forms and procedures which will be basic to the installations at all mills and likewise on certain policy decisions and will transmit these to your mill by the proper means as rapidly as they become completed. It is probable that the most satisfactory method will be to have a small meeting of representatives from the mills which will next take up the program."

Did you proceed to work out certain forms that would be necessary? A. Some, yes, sir.

* * *

[2374] Now, in the final paragraph on the second page you state: "In summary it appears it will be two to three months before we can start any active work on this standard cost program at your mill. I believe, however, that we will

be able to complete our part of the installation program by the date all engineered standards become available."

Now, the engineered standards were to be measurements of all the jobs at a particular mill; is that right? A. Yes. All the jobs and likewise standards of waste percentage and of size material required; all the costs and standards.

* * * *

[2375] Q. (By Mr. Dyer) Turning to General Counsel's J-13, this is Mr. Oeland's reply to your letter of July 13; is that right? A. Yes, sir.

* * *

[2377] Did you reply to Mr. Oeland as to which way he should go? A. I recall rather vaguely that we were able to make some recommendations to them to enable them to make some sort of a start.

Mr. Hawkins and Mr. Barrett had got some sort of start in setting some rough standards and collecting some initial information.

* * *

Mr. Dyer: Mr. Examiner, I now offer in evidence what has been marked General Counsel's J-14, being a memorandum to quite a few people, from Mr. Sterling L. Smith, subject, Standard Cost Installation Program.

It would appear that the memorandum is addressed initially to—I will ask Mr. Smith to correct me—to [2378] the cost men at the various mills, with copies going to the mill treasurers and superintendents, to several persons at Deering, Milliken Service Corporation, to Mr. E. F. Flanigan. Would that be at Deering, Milliken and Company, Inc.?

The Witness: Well that is his location. But it is to him in his capacity as controller of Excelsior Mills because he kept the books for Excelsior-Clemson.

Mr. Dyer: Also copies to Minot K. Milliken and Roger Milliken and other men of the service corporation dated August 21, 1956, subject "Standard Cost Installation Program."

Trial Examiner: General Counsel's J-14 is received.

* * * *

Q. (By Mr. Dyer) Now, Mr. Smith, would this be a true statement; that during 1956 you had a number of inquiries from the various mill treasurers as to how the system should work? A. Yes, sir.

Q. And was this memorandum of yours designed to give them a—to give them some more information as to how it should work? A. Yes, sir.

Q. In the first paragraph at the bottom of the first paragraph you speak of other members of the organization. What do you mean by "members of the organization"? [2379] A. I don't know what I precisely had in mind at the time. But I am thinking about in talking to a man at each mill that other people at that individual mill who would be interested in it.

Trial Examiner: Where is this?

What paragraph?

Mr. Dyer: The bottom of the first paragraph.

Trial Examiner: Yes I see it. Thank you.

The Witness: That is, I am thinking about, for example Don Barrett, in starting to discuss this thing with Mr. Oeland and the overseers, and each one of these men the same way.

Q. (By Mr. Dyer) In other words by "the organization" you mean all the mills, as well as some personnel——

Mr. Updike: No, each of the mills.

The Witness: I am thinking in terms of each of the mills.

In other words, it is a problem of addressing them, how you are talking to these fellows.

* * *

[2386] Trial Examiner: General Counsel's J-16 will be received.

* * *

[2387] A. Some time in 1950, some one of the treasurers became concerned about the high cost of his unemployment compensation insurance and asked me to dig into the matter as a problem of cost reduction.

Q. Let me point you to the last sentence in the fourth paragraph. "But our costs have risen to almost five times this figure—"—referring to the previous amount—"—approaching the high cost in 1949; which alarmed us and started us working on this problem." A. Yes.

[2388] Q. Was that the thing that got you started into it first, the high cost of 1949? A. Yes. Some of the treasurers saw that and were concerned about it and we wanted to see what we could do in reducing that cost.

* * *

Q. All right. Would you receive reports from each of the mills as to the amounts—as to the numbers of people being separated? A. Yes, sir.

Q. You would also receive from the mill a report whenever anyone was separated, claimed, and got unemployment insurance? A. No, sir.

Q. How would you get that information? A. Once a quarter I got a summary report of the total claims made and claims allowed from each mill with some classification.

Q. And this report is on a six-months basis, is that right? [2389] A. It has been pretty much quarterly. It may have been reduced to a six-monthly basis by now.

Q. And from getting those figures from the mill, would you project what the total cost of all mills would be for a particular period? A. Well, obviously from this letter I didn't do so. But primarily I made an estimate from the figures from the individual mills. The total projection was adding up the totals of the individual mills.

> Mr. Updike: In answer to your question would you do thus and so, do I understand that in this instance he did do that?
>
> Mr. Dyer: I think that is what the witness testified to.

* * *

[2390] "There is a strong indication that not all of the 1954 high cost is due to the personnel reductions. It seems that there has been a serious loss of our effectiveness in dealing with this situation."

Q. Can you tell us in particular what this latter sentence means? A. Well, apparently from my analysis of the figures at that time, I concluded at specific mills and specific cases that they were not doing as well as they had done previously in such things as transferring employees from one department to another within the same mill as I described this morning, and that type of thing.

Q. Now the figure so far referred to of $345,000 in the [2391] first paragraph and $40,000 to $70,000 as stated in the fourth paragraph, are those total figures for all mills? A. Those are total figures for all the mills in South Carolina.

* * *

[2392] Q. Now the second page is that of a breakdown by mill as to the probable cost as a percentage of the taxable payroll of each of those mills. A. Were you asking me, sir?

Q. Yes. A. Yes, sir, that is correct.

* * * *

[2395] Q. (By Mr. Dyer) Now, Mr. Smith, in the first memorandum, General Counsel's J-17, reference is made to Henry Sloan's bulletin. Henry Sloan is an independent expert in the field of unemployment compensation, is he not? A. Independent consultant on all sorts of wage and hours problems.

Q. All right. Did you receive bulletins from Mr. Sloan? A. No, I did not.

Q. Now, in this memorandum you referred to John Cauthens getting up some estimates. And you state that you think his estimates are probably about correct. And you state further that as soon as you have received Mr. Cauthens' bulletin and have had a chance to digest it, you will write further with specific suggestions. You next state "At this time you [2396] might alert your personnel departments to have in good shape the files on each terminated employee who drew benefits. They will particularly want to have the records of past earnings by quarter as the new law provides the duration of benefits may vary from ten weeks to 22 weeks depending upon the qualified earnings. I don't have the formula yet."

When you say they will want to have the records of past earnings, are you referring to the personnel departments? A. Yes, sir.

Q. Turning to the General Counsel's J-18, are these your specific comments to the various parts of the outlined legislation? A. Yes, sir.

Q. Was there any discussion after your memorandum went to these various mill treasurers and Mr. Roger Milliken concerning this memorandum? A. Yes, sir.

* * *

[2398] Q. Now on the front page of General Counsel's J-17 and General Counsel's J-18 I see handwritten notations. On General Counsel's J-17 there is a notation, "Miss MacFarland: Show this to Mr. Elliott to get his reaction."

[2399] The first one is signed JMO.

The second one says "Miss MacFarland: Show this to Mr. Elliott and get his reaction." Signed JMO.

Who is Mr. Elliott? A. He is an independent consultant on this type of subject.

Q. Did you have any contact with Mr. Elliott on that topic? A. At the instructions of one of the Treasurers who hired Mr. Elliott I did meet with Mr. Elliott and discuss some of these matters. Whether it was at this time in connection with this bill I do not recall.

Q. Do you know whether Mr. Elliott took any action with regard to the legislature after your discussions with him? A. I do not recall, sir.

Q. Now, can you tell us who asked you to review and analyze this law? A. To the best of my recollection, the personnel manager of Judson Mill, to which my office is physically attached, brought Mr. Cauthens' letter to me

and said he and his boss, his treasurer, would like my comments on that.

Q. None of the other treasurers asked you for comments on it? A. I think before I completed the analysis of it, I had telephone calls from one other personnel manager and two [2400] treasurers.

Q. But you sent your memorandum to all of them so they would all be informed as to what you had developed? A. Yes, sir. I would guess that probably one of the treasurers would guess it was something he thought the other treasurers would be interested in.

* * *

Mr. Dyer: Mark this General Counsel's J-19.

* * *

Q. (By Mr. Dyer) Did you receive a copy of John Cauthens' letter of March 7? A. Not directly. It must have been referred to me by some personnel manager or some treasurer.

Q. Would that normally be the people at Judson where your office is located? A. It could be anybody.

It could be anybody.

Q. You then undertook to write to the various people listed here and tell them that "It is my impression that we should [2401] all act on his recommendation to write the Governor, recommending Miss Faith Clayton for reappointment. I have been asked by several to mention this, as our experience in every way confirms the good things Mr. Cauthens had to say about her and the results if she is not reappointed."

Were you asked by all the treasurers to write to all the mills asking them to do that? A. I was asked by several

personnel managers acting after discussions with their treasurers. I recall those. I don't recall whether any treasurer spoke to me directly.

Q. Did some of the personnel managers ask you to write to anybody else? A. They said they had discussed the matter with their treasurers—that is, each one said he had discussed it with his boss, and that they thought it was something that should be acted on quickly. Somebody should send a general letter around. And they asked me if I would do so.

* * *

[2404] Q. And you continued to submit the unemployment compensation insurance reports thereafter on a six months basis?

To all the mills? A. Within the period we are talking about, yes, sir.

Q. Copies in each case would also go to Mr. Roger Milliken, Mr. C. G. Johnson and Mr. Lowry; is that right?

Mr. Updike: Well it speaks for itself. They are routed to them.

You said it would go to.

Mr. Dyer: What I was attempting to do Mr. Updike was to stop burdening the record. I was just asking the question if reports during this period went, as a rule, in addition to the Treasurers, managers and superintendents, to the personnel manager, Mr. Roger Milliken, Mr. C. G. Johnson and Mr. K. M. Lowry.

* * *

[2405] Q. (By Mr. Dyer) Mr. Smith, do you regularly attend the quarterly treasurers' meetings? A. I am regularly invited to attend what treasurers' meetings there are.

Q. I am sorry I couldn't hear all the answer? A. I say I am invited to attend the treasurers' meetings, so-called, that there are, whether they are quarterly or less frequent.

Q. And do you attend those meetings? A. Almost always, yes, sir.

* * *

[2406] Trial Examiner: General Counsel's J-23 is received in evidence.

* * *

Q. (By Mr. Dyer) Mr. Smith what is a competitive recheck? A. Competitive recheck is examination of cloth after it has been packed, inspected and packed. And competitive means the recheck of competitor's goods which are bought in the open market.

Q. All right. Who performs the recheck operation? A. For the cotton mills a department located at Pacolet Mills, South Carolina.

Q. Does that perform recheck operation for all the D-M Cotton Mills? A. At that time for all the carded cotton mills, yes, sir.

[2407] Q. Was there another recheck operation for all combed cotton? A. For combed on synthetic goods at Judson Mills.

Q. Now at Pacolet Mill, was that a division of D-M, South Carolina, by any chance? A. No, sir.

Q. It was just a division of Pacolet Manufacturing Company? A. Yes, sir.

Q. On what basis would goods be sent there for recheck? A. Are you referring to competitive goods?

Q. In other words samples of the cloth made by each of the D-M Mills, carded mills, would be sent there.

On what basis were they sent there? A. Each mill treasurer would decide what goods he wanted to have rechecked both as to the constructions to be rechecked and the frequency of the recheck and would instruct his mills to send quantities of goods to the recheck department. Normally he would establish a regular schedule which he would change from time to time.

Q. And what was rechecked? Was it lab work? A. Sir?

Q. Was this lab work as such or what? A. Mostly a repetition of the cloth inspection. Some lab work was also done.

Q. All right. Now as to competitive recheck, would that [2408] be cloth from outside competition? A. That is correct.

* * *

Q. Now, would the mills themselves buy these outside goods? A. The mills would instruct the sales department to buy the goods for their accounts using me as a means of transmitting the information.

Q. All right.

[2409] When you speak of the sales department are you speaking of the sales department of Deering, Milliken and Company, Inc.? A. The sales department—the particular sales department at Deering, Milliken and Company which served them, yes.

Q. All right.

Now when the goods were shipped to recheck department and they were tested, the results of the test would be made known to the mills on this competition cloth. A. To the mills making that construction; yes, sir.

Q. All right.

And what would be done with the cloth thereafter? A. It would be shipped to the mill which had ordered its purchase and was paying for the cloth.

* * *

[2410] Mr. Dyer: Mark this General Counsel's J-24.

(The document above-referred to was marked General Counsel's Exhibit J-24 for identification)

Trial Examiner: I think you have told us that the mills asked for this cloth.

The Witness: Yes, they ordered it particularly.

Mr. Dyer: Mark this General Counsel's J-25.

* * *

[2412] Trial Examiner: General Counsel's J-24 and J-25 are received in evidence.

* * *

[2413] Q. Now, from this it would appear that the sales department was the one who was purchasing the goods for each mill? A. The sales department actually placed the orders as instructed by the treasurers.

* * *

[2415] Trial Examiner: Let me direct your attention to General Counsel's J-24, the first sentence. That sentence speaks of the schedule proposed by the sales department. That is just one other thing that I don't understand.

"I understood you to say that the mill treasurers tell the sales department what they want. Now what is this proposal by the sales department?

The Witness: The mill treasurer would—each mill [2416] treasurer would say broadly what he would like to have in the way of competitive recheck. And then I would collect that information and take or send it to the sales department. The sales department——

Trial Examiner: The sales department would make the specific proposals within the broad request; is that right?

The Witness: That is right. Some of which are hard to get. And they would suggest modification.

* * *

[2419] Mr. Dyer: Mr. Examiner, I now offer what has been marked General Counsel's J-27 being a memorandum addressed to mill treasurers from Mr. Smith, subject "State Taxes on Life Insurance," dated March 11, 1955.

* * *

[2420] None of the treasurers had been in touch with you with regard to this? A. No, sir.

Q. Can you tell us how the expense of the recheck department was born? [2421] A. A charge of so much per yard is made for goods rechecked.

Q. That charge goes to the individual mill? A. Yes.

Q. And where more than one mill benefits from the particular type of cloth checked, is that charge apportioned between mills which would benefit? A. No they schedule the goods to accomplish the same objective.

Q. Now going back a minute I just notice this: In your reports that you made up on the fixer section sup-

plies, did the mills use a work sheet as such which was a printed form? A. Yes, sir.

Q. Was that printed form—— A. Pardon me. Let me amend that. Some mills did and some didn't.

Trial Examiner: What schedule are you referring to there?

Mr. Dyer: The fixer section supplies report would be General Counsel's J-8.

My question was directed to the mill use of a work sheet.

Q. (By Mr. Dyer) Was the work sheet as such some form that was devised by you? A. Some mills use such a form. Some did not.

Q. Was the form itself one that was devised by you, sir? [2422] A. I say some mill used a form devised by me and some did not.

Q. Where the mills did, was the form used one that was devised by you? A. Mr. Dyer, I tried to say simply this: That some mills did use a form devised by me and some mills used something else.

* * *

[2424] *Cross-Examination*

Q. (By Mr. Updike)

* * *

[2429] Q. Now I turn to another topic. In Exhibit J-7 you have a number of charts which include the word "goal". And, I think you stated that it was a theoretical or a synthetic, is I think the word you used, a synthetic goal? A. Yes, sir.

Q. Can you tell us how the particular goal was constructed? A. Yes, sir. If we refer to the fourth page of this exhibit——

Trial Examiner: Which is that?

The Witness: This is J-7, sir. There is a letter and then there is a large page and small page and a small page and then the next large page. The last column shows "goal". It says "Best Average 60 weeks to 10-5-51 I believe [2430] it is meant to be. The top line shows $1.23, P #5, meaning Pacolet No. 5—Pacolet Mill No. 5 for shuttles which is that top line. For those 60 weeks on the "E" looms, that type of loom had the lowest average shuttle cost. Then the next figure which is Check Straps 26 cents is "G" which was Gaffney had the lowest actual average cost. And so on. So we developed this figure synthetically from the best experience of any mill that had this individual type of loom.

It was purely some sort of thing as a guide for each treasurer.

Q. (By Mr. Updike) In other words while the goal in the aggregate was synthesized, each individual step in attaining the goal had been the subject of practical attainment at some specific mill, is that right? A. Yes, sir. These treasurers were highly competitive in their outlook. And if they could see that one treasurer had achieved something at one of his mills they felt that they probably could do likewise.

Trial Examiner: You say this is representative of some of the best experience of any mill that had what? I don't think you finished that.

The Witness: That had the same type of equipment. This first page showed the "E" model looms. And this same approach was taken on each other different type of loom operated by these cotton mills.

* * *

[2432] Q. (By Mr. Updike) Now will you please turn to the fifth paragraph of Exhibit J-12, and specifically the first sentence of that paragraph which begins with the words "While we are marking time, so to speak, waiting for the availability of qualified men, I will be working on certain [2433] forms and procedures which will be basic to the installation at all mills. And likewise on certain policies decisions."

Now, under questioning by Mr. Dyer, I believe you said that the certain forms and procedures—you were working on forms and procedures which were to be basic to the installations? A. Yes, sir.

Q. Beyond that, when you had activity with respect to this program, just what did it consist of generally? A. Well, it consisted of working with the individual mills when a mill had decided to go ahead with the program and have this cost system installed at its mill. We first had to study their existing cost and industrial engineering system to help us determine how big the job was going to be, what their personnel would be, what their available personnel was and what additional personnel they might need. Then we would map out a production schedule for installing the system.

Q. For yourselves, so to speak? A. And to guide them— well to guide the mill personnel. In other words it is exactly the same sort of job as I had done for many years in this consulting field.

Q. You mentioned Judson and Otteray? A. Yes, sir.

Q. A man named Clyde Simpson was already working with them; is that right? [2434] A. Yes, sir.

* * *

[2435] Q. (By Mr. Updike) Now the other words to which I would like to draw your attention are the ones that read: "And likewise on certain policy decisions."

What were the policy decisions that were referred to in this letter of yours to Mr. Oeland? A. Well, there would be several. One had to do with the level of the cost standards on which the product costs could be calculated.

Some treasurers would feel that they would want these tight engineered standards for the control of their operating costs from week to week but might have some different ideas to the basis that should be used for calculating their product costs. And we had to come up with a recommendation of what should be the best, the most usable basis for [2436] calculating product cost. That is one type—well when I say "policy decisions", let's say it is my making up my own mind for a recommendation to the treasurer. But of course each individual treasurer would decide what would be done at his own individual mill.

* * *

[2438] Q. And basically do I understand your testimony to be that you and your people worked with the cost people and the industrial engineering people of the staffs at the respective mills? A. Mainly such, as indicated in connection with the Unemployment Compensation. Occasionally with the personnel people. Of course with the Treasurer and the Manager.

* * *

[2442] RUSSELL HUDSON BUSH, called as a witness having been first duly sworn, was examined and testified as follows:

Trial Examiner: Your full name?

The Witness: Russell Hudson Bush.

Trial Examiner: Where do you live?

The Witness: 310 South Park Drive, Spartanburg, South Carolina.

Direct Examination

Q. (By Mr. Dyer) Will you tell us what your connection [2443] with the engineering department is at Deering, Milliken Service Corporation? A. I am Chief Engineer.

Q. How long have you been with the Engineering Department? A. Approximately 11 years.

Q. In other words your service as an engineer antedates the founding of the Service Corporation; is that right? A. That is correct.

Q. And as an engineer prior to that time did you service the various D-M Mills? A. The mills which are now stockholder mills in the Service Corporation, yes, sir, I did.

Q. Did you have any experience in any of the various D-M Mills before assuming your post as an engineer? A. No, sir.

* * *

[2444] Q. Where is your department set-up? A. In Spartanburg, South Carolina.

Q. Now, what is the main purpose and functions of the engineering department? A. It is to have a general consulting engineering service available for the use of the stockholder mills.

Q. All right. Has the engineering department at any time serviced any other companies besides the stockholders? A. We have done a few jobs for other than stockholder mills.

Q. Who would the others be? A. At one time we did a small amount of work for W. R. Grace and Company. We did a little work for a couple of department stores.

Q. A couple of department stores? A. Yes, sir.

Q. Were those department stores in which Mr. Milliken has an interest? A. That I don't know, sir.

Q. Have you done any work for Deering, Milliken and Company? [2445] A. A small amount of work in an advisory capacity only.

Q. Can you tell us whether charges were made to these various companies for your work? A. Yes, sir.

Q. How were they based? A. Based on a per diem or an hourly rate basis.

Q. Were the Department Stores that you performed services for Mercantile Stores? A. Yes, sir.

Q. Now, you said your department does consulting engineering for these mills. What particular phases of engineering does your department cover as far as the mills are concerned?

Would that be construction? A. The building design and follow-up on construction and the design and installation of service facilities such as boiler plants, plumbing and heating, air conditioning, electrical systems, water treatment plants, sewage disposal plants; practically everything which is considered as mill buildings and service buildings.

Q. Would that also include machinery being installed at the mills? A. No. I could probably express it this way:

Probably everything in the mill exclusive of production machinery.

* * *

[2449] Q. Now you state here that you would secure the prices on the steel. How would you go about that? A. How would we go about it?

Q. Yes. A. In this particular instance I don't recall. If it is an item of material or equipment, we would give the purchasing department of the Service Corporation the necessary specification and description and the purchasing department would secure prices. If it were plan and specification of a project, the engineering department would send the plans and specifications to the contractors for bids. That is the usual procedure both for us and Deering, Milliken.

* * *

[2450] Q. I think according to the way this reads you would not be sending plans and specifications to a contractor. That would have been handled through the purchasing department. And after the purchasing department secured the prices, would they send them back to you for your analysis and recommendation to the mill? A. On this kind of project they would. In this particular instance I don't recall whether we requested—I don't recall whether the purchasing department requested the price [2451] on the steel or whether we did it directly. This is the borderline. We could have handled it either way. I don't recall which way.

Q. Who sets out which is to be which?

Is it just a matter of decision left to your department? A. Just discretion.

Q. When you say "Just discretion", you mean it is within the discretion of the engineering department, is that right? A. That is right.

* * *

Q. (By Mr. Dyer) Now in regard to Darlington Manufacturing Company, prior to the liquidation of Darlington, some work was started on the weave room, is that correct? A. That is right, sir, on a weave room extension or [2452] addition.

Q. And can you tell us how the contract is let for that? A. The building contract was let on a firm price basis with the bids being based on plans and specification. The electrical work was handled in the same manner. And the American Moistening Company installation was handled, I believe just on a single quotation basis.

Q. All right. As to the actual physical construction as distinguished from the electrical, the project was started but was called off before its completion. Do you recall that? A. That is correct.

Q. And there was a question as to how much the company should be paid for what they had—that is, the construction company—should be paid for the work that they had done? A. That is correct.

Q. And the construction company submitted to your department an invoice covering all the labor, materials, and commission, along with a job estimate of the percentage of work that they had performed. Is that right? A. That is correct.

Q. And you checked the matter over and told Darlington, Mr. Oeland, that in your opinion the invoiced amount represents a fair settlement. You did not field check the percentages before completion, but believe that they were

substantially correct and recommended that Darlington pay the amount? [2453] A. If that is in the record may I see it?

Q. I wasn't putting this in the record. I will just show it to you. This is a memorandum dated October 3, 1956.

(Document shown to the witness)

The Witness: I wrote the letter.
Trial Examiner: What is the answer?

Q. (By Mr. Dyer) Is what I stated correct, Mr. Bush? A. Yes, sir.

* * *

[2454] Q. (By Mr. Dyer) Now where a construction company or an outside company makes an installation at a mill after you have negotiated on it, do you check the completed results and give your opinion on it to the mill? A. Yes, sir.

Q. And where the bill is submitted, do you look over the bill and recommend to the mill whether it be paid or not, depending on the results of your check of the installation? A. Yes, sir.

Not in all cases, but we do it when requested to do so.

Q. Is that more or less standard that you are requested to do that? A. It is an engineering function, yes, sir.

* * *

[2456] Q. (By Mr. Dyer) Now, did the engineering department conduct meetings for plant engineers? A. We arranged the programming for the individual meetings.

Q. Was there an original meeting—I mean the first meeting at which the engineering department conducted the

program for the plant engineers of all the D-M Mills? A. Of all the stockholder mills in the service corporation.

* * *

[2457] Q. Were the meetings held on a periodic basis thereafter? A. Not on an exact calendar schedule.

Q. Well, I mean were they held approximately every six months? A. For a while they were.

Q. All right. And was the arrangement, the topics to be discussed, proposed by the engineering department? A. Most of the topics for discussion were proposed by the plant engineers.

Q. By the plant engineers? A. Yes, sir.

Q. Did the engineering department handle the make-up of the outline for the discussion? A. We arranged to tie the whole thing together into an interesting program.

Q. All right. And were reports of these meetings circulated to the various D-M Mills by the engineering department after the meetings? A. We kept minutes of most of the meetings, condensed them and sent copies to the plant engineers of the stockholder mills and in some cases copies to the management of the stockholder mills.

Q. At one of the meetings the question of the proper grounding of electrical motors was discussed. Do you recall that? A. Yes, sir.

[2458] Q. And after this discussion, a memorandum went to the various mills advising them to immediately check all of the electrical motors and equipment to make sure there was a proper ground. Do you recall sending such a memorandum out? A. Yes, sir.

Q. Now, would you receive requests for advice from the mill such as receiving a request from Darlington as

to what the proper lubricate schedules for the machinery would be? A. That is an unusual request for us to receive.

Q. Do you recall receiving such a request from Darlington? A. We did receive such a request from Darlington.

Q. What are the other types of request for advice that you received from the various mills? A. It would be too numerous to mention them. It might be advice on any engineering matter.

Q. Just broad topics?

> Trial Examiner: Well, we can say within the functions he has described. You may ask him whether there are any others.

Q. (By Mr. Dyer) Are there any others besides the framework you have laid out? A. No, sir.

* * *

[2459] Q. (By Mr. Dyer) Mr. Bush, do any of the mills—or have any of the mills requested recommendations from you for personnel that they needed such as plant engineers or maintenance men? A. I interpret that question to mean have I been asked for the names of people who might fill a position which is [2460] open in a particular mill?

Q. Yes. A. Yes, sir.

Q. And have you made such recommendations to the mills? A. On occasion I have, sir.

Q. Do you recall a time when Darlington wanted to sell some switch boxes and you were asked to set a fair price for the equipment? A. Yes, sir.

Q. Did you set a price for the equipment? A. I did not personally.

Q. Did someone in your department do so? A. I believe so.

Q. Now, does the engineering department conduct any type of tests or checks at mills?

Trial Examiner: Well you were told about some checks on construction. They approved or disapproved payment.

Mr. Dyer: Yes.

Q. (By Mr. Dyer) Are there any tests that are conducted by the engineering department at the mills? A. We would conduct a test if requested to do so.

Q. What would the nature of those tests be, sir? A. It might be such things as studying the power consumption of a motor or the efficiency of a boiler; things of that nature.

[2461] Q. Would you perform any tests in any of the mills where you would make a report which would later be circulated through the other mills?. A. If you are asking for a possible, I would say it would be possible.

* * *

[2643] *Cross Examination*

Q. (By Mr. Updike) Mr. Bush, on your examination by Mr. Dyer, you were asked whether there were some occasions when one of your stockholder mills would ask you for a recommendation with respect to an employee for plant maintenance purposes. Do you recall that? A. Yes, sir.

Q. Over a space of five years, say, ending in 1957 would you give us your recollection of how many such requests

you have received? A. It would be very few; probably in that period not over three, possibly.

Q. Did one such request come from Darlington? A. Yes, sir, it did.

* * *

[2465] Q. (By Mr. Updike) Mr. Bush, within the range of your knowledge, do the mill treasurers of your stockholder corporation hire a good many plant maintenance people from time to time? A. Yes, they would hire a considerable number.

Q. And I think you have testified that over a period of five years the inquiries coming to you for any recommendation for you was what, half a dozen? A. Well——

Trial Examiner: Three.
The Witness: I said a few.
Mr. Updike: I see.

* * *

[2466] Q. (By Mr. Updike) You were asked about an instance where you sent out a memorandum to the appropriate person at each one of your stockholder mills with reference to the grounding of electrical equipment. Do you recall that? A. Yes, sir.

Q. Would you tell Mr. Buchanan the circumstances that gave rise to the issuance of that memorandum? A. Just prior—just probably a month or so prior to the date of the memorandum, there was a fatality in a textile mill in South Carolina, I don't recall which one, which was caused by electrical shock. They found that some electrical equipment was improperly grounded. In textile mills there is a large number of electrical motors throughout the plant. So there is a potential danger to personnel.

Shortly after that fatality, one of the stockholder mills made a complete check of its grounding systems, and found that they were inadequate by test, although visually they looked perfectly acceptable.

I thought the matter of such importance to have it discussed at a plant engineer's meeting, so that the individual plant engineers could check the installations in their own [2467] mills and do something about the condition. It is purely a safety measure. And that is the reason for the memorandum in regard to electrical grounding.

Q. Now, will you state briefly on the record what the procedure is with respect to authorization for your department before you embark either on an inspection or on any particular job within the scope of your department's activities? A. Our work is initiated by a request or authorization from a treasurer of one of the stockholder mills.

And that is the regular procedure, is that right? A. Yes, sir.

* * *

ROBERT W. MCCULLOUGH called as a witness, having been first duly sworn, was [2468] examined and testified as follows:

* * *

Trial Examiner: Where do you live?

The Witness: Pendleton, South Carolina.

Direct Examination

Q. (By Mr. Dyer) Mr. McCullough, what is your position with Deering, Milliken Research Corporation? A. I am a member of the staff there, and also Secretary of the Corporation.

Q. And who is the President of the Corporation? A. Mr. Russell Newton.

Q. Were you with the corporation when it was a trust, originally? A. Yes, sir.

* * *

[2469] Mr. Dyer: As the trust was originally set up the contributors for whose benefit the trust was to be conducted were Abbeville Mills's Corporation, the Cot-Wool Manufacturing Company, the Dallas Manufacturing Company, Deering, Milliken and Company, Inc., Drayton Mills, Dutchess Bleachery, Incorporated, Excelsior Mills, Gaffney Manufacturing Company, the Hartsville Cotton Mills, Judson Mills, Laurens Cotton Mills, Madison Company, Monarch Mills, Pacolet Manufacturing Company and Lockwood Company.

I think probably the only company that has not been identified up until now is the Dallas Manufacturing Company.

Mr. Updike: That at one time was a mill selling through Deering, Milliken and Company.

Trial Examiner: What was that statement?

Mr. Updike: That company at one time was a mill corporation selling through Deering, Milliken and Company.

[2470] Mr. Dyer: Following the set-up of the trust—the trust was set up and the various mills contributed on a basis of their——

Mr. Updike: Well it is the same fraction principle. That is, you aggregate the sales of each of the mills. You aggregate the gross income from commissions of Deering, Milliken and Company.

And that became the denominator. And the participating shares is each mill's sales as a numerator, and the total as the denominator.

Trial Examiner: They contributed to the trust in proportion to their sales through Deering, Milliken and Company?

Mr. Updike: Yes, sir.

Mr. Dyer: Deering, Milliken contributed to the trust in proportion to the commissions?

Mr. Updike: To the ratio that it is income from commission is to the same denominator.

Mr. Dyer: As originally set up, the trust had three trustees; F. G. Kingsley, Roger Milliken and G. H. Milliken.

Trial Examiner: G. H. Milliken?

Mr. Dyer: That would be Gerrish Milliken.

Mr. Updike: That was Mr. Roger Milliken's father who was then alive.

Mr. Dyer: I see.

All right.

Thereafter the trust was incorporated in 1955. is [2471] that correct, sir?

The Witness: I believe it was, sir, early in 1955.

Trial Examiner: You say the trust was incorporated?

Mr. Dyer: Yes, sir.

It had been Deering, Milliken Research Trust. And in 1955 the——

Trial Examiner: Well the——

Mr. Updike: The form of the organization was changed from that of a trust to that of a corporation in 1955.

Mr. Dyer: Yes, sir.

* * *

Mr. Updike: Well, if you want a concession on the record, at the time of the liquidation of Darlington——

[2472] Mr. Dyer: Well that was when it was a corporation. How about back before that?

Mr. Updike: Back before that?

Mr. Dyer: Yes.

Mr. Updike: At the time of the liquidation of Dallas Manufacturing Company.

Mr. Dyer: Yes.

Mr. Updike: It ceased to be a beneficiary of the trust, or participating in it, and received book value for whatever its interest had been up to that time.

Mr. Dyer: All right. And similarly when new corporations were set up which sold through Deering, Milliken—I think a number of them were set up in 1949, 1950 and 1951—did they become members of the trust?

Mr. Updike: They became members of the trust in accordance with the terms of the trust indenture.

This of course is confined to manufacturing corporations; except for Deering, Milliken and Company itself.

Mr. Dyer: All right.

When the form was changed to a corporation and Milliken Woolens was set up, Milliken Woolens came in as part of the—became a stockholder in the corporation?

Mr. Updike: That is right.

Mr. Dyer: You have set out a certain basis on which the trust contributors—I mean the corporations contributing [2473] to the trust—they used the same basis for becoming stockholders.

Mr. Updike: I understand they did, yes, sir. And I also stipulated.

Q. (By Mr. Dyer) Now, Mr. McCullough, can you give us a broad description of the purposes of the research corporation? A. Primarily to conduct research and development activities in the fields of interest to the stockholder mills, but also our activities are broad enough to include advice of a consulting nature.

Q. Well, part of the research conducted was research into machinery, various types of machinery for production equipment, improvements on machinery; is that right? A. Yes, sir.

Q. All your research is directed at production; is that right? A. I can't think of any instance where it was not.

* * *

Mr. Dyer: I offer in evidence what has been marked General Counsel's L-1 being labeled "Project Assignment" assigned to Mr. R. J. Toher, dated December 8, 1954.

* * *

[2474] Q. (By Mr. Dyer) Was Mr. Toher a member of the Research Corporation at that time? A. Yes, sir.

Trial Examiner: I wonder whether "member" is the right word?

Mr. Dyer: Excuse me.

The Witness: He was an employee of the Research Corporation.

Q. (By Mr. Dyer) What was his function in the Research Corporation? A. He was an engineer.

Q. There was a project number 952 attached and the title is "Incoming Parts Inspection, Darlington."

> "In accordance with the general program now accelerating in the Deering, Milliken mills, to inspect all purchased parts for quality of materials, accuracy of machining and general acceptability, this project is being opened to cover the work at Darlington. The first survey will be made of weave room parts, since this appears to be a major source of parts expenditures. A study of cost for the year 1953 is under way and from that survey it will be evident which parts should be worthy of first studies.
>
> [2475] "Charge all engineering time for this work to Project 952. Shop and materials for jigs, fixtures, et cetera for parts peculiar to Darlington and for tools to be used exclusively in Darlington will not be billed to this project but will be a cost directly to Darlington Manufacturing Company."

Q. (By Mr. Dyer) Can you tell us what the general program referred to is? A. It was felt by the Research Corporation that there was not enough attention being paid by the stockholder mills to whether or not the materials that were being bought by those mills were living up to the expectations and the specifications. And we were attempting to assist the mills in determining that, or getting their money's worth.

This particular project referred to the work at Darlington.

Q. Now, when you call it a project, you make a differentiation in the instructions as to how it is to be billed.

Would a project, as such, be one to be charged to all contributing members of the Research Corporation? A. Where the work that we are doing is of general nature, we carry it on funds of the Research Corporation. Where it is specific to a mill, the accounting system is set up so that the mill is billed for those activities which are of interest only to it.

[2476] Q. In the first paragraph you say "The first survey will be made of weave room parts."

Is that the survey to be made by the assigned man, Mr. Toher? A. Yes, sir.

* * *

[2478] Q. What I am trying to find out is if in addition to checking just brand new equipment whether your department as a result of Mr. Milliken's letter to you—rather to Mr. Newton—was going to check major repairs as well?

Mr. Updike: Well now as a result of a letter—I object to the form of that question. There is no causal relationship at all here.

Mr. Dyer: That is what I am asking, if there is.

The Witness: We normally didn't check repair work. But we were interested in seeing that the mills got the proper type of repair parts. I think he meant repair parts. But I have no way of knowing what Mr. Oeland meant for sure.

* * *

[2479] Trial Examiner: General Counsel's L-3 is received in evidence.

* * *

Q. (By Mr. Dyer) The subject is listed as proper installation, inspection, and protection of new machinery.

Would this memorandum from Mr. Newton—do you know whether it has some reference to the exhibit just introduced, previously introduced? A. General Counsel's L-2?

Q. Yes. A. These are all germane to the service that we were furnishing the stockholder mills of helping them take care of their machinery.

* * *

[2486] Trial Examiner: General Counsel's L-4 is received in evidence.

* * *

Q. (By Mr. Dyer) I note that the subject is stated as "Maintenance Memo No. 9, Portable Work Bench for Maintenance Men."

Prior to this time and following this time were there a series of maintenance memos issued by you? A. Yes, sir. I believe that there was eight before this. But I don't know whether there were any after this. This program is not now in effect.

Q. All right. At the time what was the program? A. I meant by the program just a minute ago the procedure sending out serially numbered maintenance memos or maintenance memos of any kind.

[2487] The Witness: Now may I have the question again?

Q. (By Mr. Dyer) This maintenance memo is supposed to have some reference to a project or program, does

it? A. To the general maintenance program in the Research Corporation.

Q. Maintenance program in the Research Corporation? A. Yes, sir.

Q. Or maintenance program that is carried on at the mills. A. Well it relates to both. But this is a particular item which we are trying to give advice to the stockholder mills as to how we think their maintenance can be improved.

Q. All right.

To get back to the original part. I am asking was this just a series of memos in regard to various concepts of maintenance? Or did it have some specific point of reference such as maintenance men? A. Each maintenance memo dealt with a specific item related to the general area of machinery maintenance.

* * *

[2489] Q. Where you talk about the maintenance man concept, what is meant by that? A. The concept of using maintenance men is different from the normal concept of machinery maintenance in textile mills.

Q. Is this in relation to a preventive maintenance program? A. Precisely. In that the maintenance men are supposed to keep the machines running; whereas, the normal maintenance procedure is to start them up after they stop for some reason. To do emergency fixing is the normal procedure. These men were supposed to do preventive fixing, to prevent the stoppage.

Q. All right. Had a program been agreed to install preventive maintenance in the various mills?

Mr. Updike: Agreed to between whom and by whom?

Q. (By Mr. Dyer) Between the treasurers or by whoever—well let me ask first: Was a program of preventive maintenance discussed at a treasurer's meeting which you attended? A. Yes.

* * *

[2490] Q. Was any such recommendation made? A. Yes, sir.

Q. By whom? A. By Mr. Newton.

* * *

[2491] Trial Examiner: General Counsel's L-5 is received.

* * *

Q. (By Mr. Dyer)

* * * *

Q. All right. Now, are the maintenance trucks referred to in this memo different from the portable maintenance men— A. It is the same thing.

* * *

Q. All right. Did you personally make an inspection at each mill? A. No, sir.

[2492] Q. Who did, sir? A. I am relying on memory now. I probably made some of them; and other members of the staff of the Research Corporation made others. I think most of these were made by one of the other men.

Q. All right. Now, are there any mills—I count 15 mills on here. Is that approximately right? A. I haven't counted them but it looks like about the right number.

Trial Examiner: Fifteen you say?

Mr. Updike: I count 15 too.

Mr. Dyer: All right.

Q. (By Mr. Dyer) Was this preventive maintenance program in effect at these 15 mills? A. Not to the same degree in all of them.

* * *

[2494] Mr. Dyer: Well I want to refer to the second sentence, sir.

Trial Examiner: To the what?

Mr. Dyer: The second sentence in this paragraph.

Mr. Dyer: "—but are planning to put more emphasis on this in the near future. This is very important since [2495] our maintenance program depends on shops being well equipped and well run."

Q. (By Mr. Dyer) By "our maintenance program", you refer to this preventive maintenance program? A. Yes.

Q. On the third page, the next to the last paragraph you state: "To put the machine shop inspections on a numerical basis it would be possible to give each of the above five classifications a merit value of 20 points. Thus a shop which was up to standard in all five would get a hundred percent rating. Where specific items or steps were recommended to correct a certain lack of tools or other deficiencies, the rating could be something less than 20 for that particular classification."

Then you state: "The first survey could be completed in about two months."

Was such a program undertaken? A. It was started.

* * *

[2496] As to the machine shop inspection, was such to take [2497] place at mills other than the ones listed in this memorandum? A. That was our intention at this time, yes.

Q. Was 't your intention to cover all of the D-M Mills, as to machine shop inspections? A. All of our stockholder mills.

* * *

Q. (By Mr. Dyer) Were copies of this memorandum sent to the mills on the face? A. I don't believe so. I don't remember. But I would have shown copies if they had been sent. I don't see any indication on there.

Mr. Updike: On its face it is just an internal memorandum, isn't it?

Mr. Dyer: I was talking about the mills listed on the face.

The Witness: May I amplify that a little bit?

Q. (By Mr. Dyer) Go ahead. yes. A. Ordinarily we would not report this kind of information, especially where we would say we have not "urged" this mill. I would not send that around.

Q. You wouldn't send that to that particular mills? A. I wouldn't send that out, no.

* * *

[2498] Trial Examiner: General Counsel's L-6 is received.

* * *

Q. (By Mr. Dyer) Did you prepare this memorandum, Mr. McCullough? A. Yes, sir.

Q. You state in the initial paragraph: "The following are the machinery maintenance goal recommendations made at the [2499] October 11 meeting in Drayton Mill."

Was that a treasurer's meeting? A. Yes, sir.

Q. "These recommendations are general to all mills—cotton, filament, worsted and woolen.

"The machinery maintenance group of your research corporation will continue to emphasize and assist in setting up better maintenance practices at a higher priority than inspection demeriting activities for the next three to six months."

Q. What are inspection and demeriting activities? A. The machinery maintenance group of the research corporation consist of men who are qualified through their experience to inspect machinery and to advise the treasurers of its condition.

These activities we call the inspection demeriting activity.

Q. Was a formal program set up as to a demeriting as such?

Trial Examiner: That would refer to an earlier exhibit, I believe.

Mr. Dyer: Demeriting?

Trial Examiner: Yes.

Or was it meriting?

Mr. Updike: No, it was demeriting.

The Witness: No it was meriting. It was the only time [2500] we have ever used the merit system. It was on the machine shop.

We got into merits. I don't think we got into demerits.

* * *

Q. (By Mr. Dyer) You state very likely our mill group [2501] inspections will be confined chiefly to warp preparation, looms, opening and picking equipment and possibly spinning."

Q. In other words, was it an inspection to be made in each one of those processes at each of the mills and the equipment rated on a demerit basis? A. Yes. Except we

wanted to be careful that some of these areas, cotton and filament, worsted and woolen, were not then actually in the program. They were plans. I don't want to have you get the impression that this was a package complete. We are still trying to complete it.

Q. All right. We will get into the demeriting activities in later things.

You have established in this memo six months goal for the mills; is that right? A. We made that as a recommendation.

* * *

[2502] Q. What are the standard inspection forms? A. That was one of the areas in which we had worked up for the mills' use reasonably standard forms for inspecting "E" model looms in all locations, "X" model, and so forth.

* * *

[2503] Trial Examiner: Let's ask was DMRC at that time making demeriting inpections?

The Witness: Yes, sir.

Q. (By Mr. Dyer) Of some of the machinery at the mills? It was, is that right? A. Some of the machinery at some of the mills.

Q. All right. What mills would those be? A. Primarily the cotton mills. Primarily, that is.

Q. And DMRC had not yet covered the full range of machinery at the mills; is that the idea? A. That is correct.

* * *

Q. I call your attention to the item marked "B" under No. 1 on this page. It says: "Do not let maintenance men

[2504] be pulled off the machinery moving, rush-short-term jobs, et cetera."

Had it come to your attention for possibly your staff making demeriting inspections that some of the mills were pulling maintenance men off their maintenance work? A. Yes.

* * *

[2505] Trial Examiner: General Counsel's L-7 is received.

* * *

[2506] Q. Is this to be a demeriting inspection of the mills as to how they are using maintenance men? A. Yes.

* * *

Q. (By Mr. Dyer) Now I think there is a schedule attached to the back page as to how these inspections were to be made at the various mills; is that correct? A. Not how, but when.

Q. Pardon me. Yes. When. [2507] A. Yes.

Q. And were these inspections so made? A. Yes, sir. But I don't want you to think we made them on that exact schedule.

Q. All right.

Was a report issued to the mills with the results of this inspection?

A. Yes, sir, I believe there was.

Q. Did the report show all of the mills and what their rating was together? A. Together, yes.

* * *

Q. (By Mr. Dyer) Would the report show the demerit for every one so their relative standing could be obtained? A. Yes.

Q. Now I note that this memorandum shows copies going to various people, including Mr. Roger Milliken. Were copies of the report sent to the same individuals listed on General Counsel's L-7? A. I believe the report was distributed at the Treasurer's [2508] meeting mentioned in the second to the last paragraph. I don't think we sent it to them.

Q. All right. Was there a discussion at this treasurer's meeting as to the results shown by this report? A. Yes, sir.

Q. Were you present at it? A. Yes, sir.

* * *

Trial Examiner: General Counsel's L-8 is received.

* * *

[2509] And I take it that the last page, as shown attached to this memo, is the schedule you speak of? A. That is correct.

Q. Was this schedule gotten up by you? [2510] A. Yes.

* * *

[2511] Q. Can you tell us whether the selection of the maintenance men referred to in the second paragraph was made on the basis of one of the demeriting inspections of the mills? A. No, sir. It was made as a result of the discussion at the treasurer's meeting where we made the recommendation. The treasurers accepted the recommendation and then said who is going to be host. And they asked us to recommend.

[2512] But we did not recommend based on demerits alone.

Q. What did you base it on? A. Geography for one thing. We wanted to pick a central location. But primarily

the program at the mill, the degree to which it met our recommendations, were I think the overriding considerations.

Trial Examiner: Well the degree to which you met the recommendations would be reflected in the merit or demerit ratings, would it not?

The Witness: Yes, but there are a lot of small things that aren't covered in those five points that we discussed earlier.

* * *

Trial Examiner: General Counsel's L-9 is received in evidence.

* * *

[2513] Q. (By Mr. Dyer) I take it, Mr. McCullough, that this is a further memorandum to clarify points concerning the maintenance program. In other words it is an addition to the previous exhibit; is that right? A. Yes.

Q. One of the points you wanted to clarify was that the visiting maintenance men—reading from the first paragraph, the second sentence—"should arrive at the host mill prepared not only to observe the complete range of practices, methods and record keeping techniques in use at the host mills, but also to participate in the actual machinery maintenance."

"The maintenance men should bring their work clothes with them and as many small tools as it is convenient for them to bring. We do not suggest that they bring their tool boxes, but such "much needed tools" as box-end and open-end wrenches, pliers, screwdrivers, et cetera.

Now, had there been some question as to whether they were supposed to do some work at the mill or not? A. Yes,

it was our recommendation to the mill that these men do what you might call on-the-job training. When they were told that a certain way of changing a gear was advantageous, we suggested they go out and try it, not for the purpose of maintaining the machinery, but for getting the experience of doing this thing. A single gear on a spinning [2514] frame would probably have been changed eight or ten times in the course of a morning—one gear.

* * *

[2515] Trial Examiner: What are you referring to in the third paragraph in the phrase Mr. Dyer read: "The concept of the program on a company-wide basis."?

The Witness: We meant those mills who were participating or following the recommendations that we made to the stockholder mills.

Trial Examiner: I am not sure that I understand.

Mr. Dyer: I don't understand it either.

Mr. Updike: Well, is that less than the total number of stockholder mills?

The Witness: At that time it was less—well, yes, it was less than all the mills that owned stock in the corporation.

Trial Examiner: What was less?

The Witness: My concept of company-wide.

Trial Examiner: Well I still don't understand. I am wondering what "company-wide" refers to.

The Witness: It says there "the concept of the program on a company-wide basis will be made to stress the importance of the maintenance man's job to visitors."

Prior to this concept of maintenance men a fixer's job [2516] which was the only man that had to do with upkeep of machinery, was a fairly humdrum job with no particular importance attached to it. There wasn't any significance to being a fixer. But we wanted to set maintenance men apart and to show them that they were special. We wanted to show the men at Darlington, for example, that they had their counterparts at Abbeville and that they were being given special attention because of the importance that management felt their jobs had.

Q. (By Mr. Dyer) Let's skip to the fifth paragraph. Is this paragraph an endeavor of yours to get wider participation by the visiting people?

You refer in particular to the review session where the visitors were asked to discuss their visit and what they have learned. A. One of our aims was to pick up from one of our stockholder mills suggestions for improved maintenance and to benefit the others by passing it on to them. We knew these men who would be very close to the work might have some very practical suggestions.

* * *

[2526] Trial Examiner: General Counsel's L-12 is received.

* * *

[2527A] Q. (By Mr. Dyer) The subject is stated as "revised spinning maintenance inspection forms."

Were these forms devised by your department, sir? A. Yes.

* * *

Q. Mr. McCullough, what were these forms used for? A. These were the forms that the mill machinery inspectors used to achieve—to arrive at the meriting ratings on their own spinning frames.

Q. All right. Were these kept as a record at each mill? A. Yes.

Q. And actually whether they kept these as a record or not was part of the demerits which men from DMCR might assign to the mill; is that right? [2527B] A. The keeping of the reports was a criterion on which we based the excellence of the system.

Q. You based the what? A. The degree to which the system followed our recommendations.

* * * *

Q. (By Mr. Dyer) Where staff people from DMRC made demerit inspections, did they assign demerits on this basis among others; that the department was not keeping proper records? A. Yes.

Q. And records would be records from these forms; is that right? A. These forms would be some of the records. yes.

* * *

[2529] (By Mr. Dyer) Now are these same forms used by the staff men from DMRC in inspecting the departments? A. Yes, sir. the same machinery, yes.

Q. All right.

* * *

[2532] Q. (By Mr. Dyer) Now, General Counsel's L-13 refers to the third round of spinning frame maintenance inspections.

I note in the last paragraph it states: "It has been over eighteen months since we made our last round of spinning frame maintenance inspections."

The previous inspection would have been around the first part of 1955; is that right? A. That is right.

[2533] Q. And there was an inspection made some time previous to that? A. Yes.

Q. Can you tell us about how long before that? A. It was during 1954, as I remember.

Q. Well this memorandum sets out what seems to be a spot-check system for checking spinning frames, is that right? A. That is right.

* * *

[2534] Q. Well let me read the whole sentence. "In that period most of the mills placed into operation the use of maintenance men and all the mills upgraded the level of mechanical excellence of their spinning equipment."

Excuse me. I was skipping and trying to come to a conclusion with it.

All right.. The use of maintenance men contributed to the upgrading of the maintenance level of the equipment. A. In our opinion, yes.

Q. Is General Counsel's L-14 the results of the maintenance inspections mentioned in General Counsel's L-13? A. Yes.

* * *

[2535] Q. Now, under the line of the third inspection you show a goal of 1.5? A. Yes.

Q. How was that goal established? A. That goal was established on a basis of what a good overseer would expect to find on his equipment.

Well that is not said very well.

It is established on wh: : was believed to be a practical attainable level of machinery maintenance.

Trial Examiner: Where is this figure to which you are referring now?

* * *

[2537] Mr. Dyer: I note on the back page of General Counsel's L-15 there is a reference to courtesy copies, three copies per mill, being sent to all the mills and copies to Mr. Roger Milliken and other mill treasurers.

Q. (By Mr. Dyer) Let me ask you, Mr. McCullough, the names listed in the third column under Mr. Roger Milliken, were copies being sent to them as mill treasurers or in some other capacity?

I note there is Mr. Lowry, Mr. Defore's name on there? A. We try to keep the other service corporations informed of our activities. And they try to keep us informed of theirs so we don't overlap, don't duplicate and waste time and money. For that reason it was sent to Mr. Lowry and Defore. The other gentleman there, Mr. Milliken and the two Mr. Sibleys, and Mr. Stone, are either members of the Board of [2538] Directors of the Research Corporation, or they are management officials interested in the goings-on in these mills.

* * *

[2541] Trial Examiner: General Counsel's L-17 will be received.

* * *

Q. (By Mr. Dyer) Mr. McCullough, this memorandum refers to the results of the recently completed sixth warp preparation inspection. Can you tell us if this program started in 1954? A. This was one of the later ones. It was either late 1954 or early 1955. I don't know when the first one took place.

Q. All right. What is meant by warp preparation? Or would that be shown by the last page as to what goes into warp preparation? A. Yes. That tabulation on the last

page shows a large number of the things that can be wrong with the yarns that go into the warp of a loom.

Q. All right. When you speak of yarn preparations, running from where up to where? A. You notice on the third page the top line says: "Caused". Do you see that?

Q. Yes. A. It says SP. That stands for spinning, slashing, tie-in and weaving. [2542] Those are the three sources of error in a warp.

Trial Examiner: Make it four.
The Witness: Excuse, me, four.

Q. (By Mr. Dyer) Is this all spoken of as warp yarn preparation? A. Yes, sir, warp yarn preparation.

Q. All right. Now turning back to the first page, this—looking to the last column on the right, there are goals there. Can you tell us how those goals were set up? A. In the same way that the spinning and weaving goals were set up; based on practical experience of what constitutes good practice.

Q. That is the practical experience of the men in your department? A. In our department, that is right, in our corporation.

* * *

[2543] Now, this program of inspection of the various departments of looms, spinning and yarn preparation, are those demeriting inspections—did those demeriting inspections take place all the way through 1956? A. We were active all through 1956 yes, sir.

[2544] Q. In these demeriting inspections? A. Of those and others, yes. In that field of making demeriting inspections, yes.

Q. Did you ever have any conversation with Mr. Milliken, Mr. Roger Milliken, with regard to these demeriting inspections being made at the mills? A. Did I ever have any conversations with him?

Q. Yes. A. Oh, yes.

Q. Within the range of 1955-1956? A. I am sure I must have.

Q. Do you recall any in particular? A. Not offhand, no, sir, no particular one.

Q. Well, do you know from your conversations with Mr. Milliken whether he was in favor of this program? A. He was neutral at first.

Q. All right. Did he change from being neutral? A. He changed from being neutral—well, he gave us a chance to show him to convince him and the treasurers. And after he began to see what we were furnishing to our stockholder mills then he came to be more in favor of it.

* * *

[2545] Trial Examiner: General Counsel's L-18 is received.

* * *

Q. (By Mr. Dyer) All right. The memorandum starts off: "You have asked for a recommendation on the best methods of operating the opening and picker lines in our various mills. The first requisite is the proper condition of the equipment. Settings of the machines are included in the maintenance procedures."

Mr. Newton goes on to say that a survey was started on what might be termed an operations research approach, to have various men from DMRC assigned to the opera-

tion. And at the end of the survey a report would be made to the management [2546] on mill practices as well as machinery condition.

Now, this survey was—well let me ask you: Was it designed for the information of all the mills? A. No, sir. These practices surveys—and we didn't get into them very deeply—were confined to the mills for which the survey was made.

* * *

[2548] Trial Examiner: Armitage is who, did you say?

The Witness: Vice President of Deering, Milliken Research Corporation.

* * *

[2549] (The document above-referred to, heretofore marked General Counsel's Exhibit L-19 for identification, was received in evidence.)

(The document above-referred to was marked General Counsel's Exhibit L-20 for identification and received in evidence.)

Q. (By Mr. Dyer) In the first letter there is reference made to an electronic slub device which was developed and manufactured by the research corporation. Can you tell us what that is?

I don't want you to reveal patent information. But just generally what is it? A. It is a device to artificially put into yarns thick places.

Q. And does the research corporation do what you might term "pure research into this field"? A. Define "pure research"?

Q. I am using the wrong terms. What kind of research does the research organization do in this field? A. We develop improved machinery and control devices to produce desirable effects in the manufacturing of textiles.

Q. Now, this is a matter of research and patents are taken out for the devices, I take it? A. Yes.

Q. Where such are patentable? A. Where they are patentable, yes.

[2550] Q. And this was such a device? A. There are issued patents on this device, yes.

* * *

[2551] Q. Now, Mr. Oeland asked—he mentioned he has a letter from Mr. Agnew stating he would be interested in such a device and would appreciate Dr. Armitage contacting Judson and handling the deal for us, Do you know whether Dr. Armitage did so? A. Yes, sir, he did.

Q. Was the deal handled by Dr. Armitage? A. Not in the way that this letter would indicate.

It later developed that Judson really didn't have any need or could not have used this device.

Q. And so they didn't buy it from Darlington? A. They did not buy it from Darlington, no.

Q. Mr. Oeland finishes up by saying, "We will be glad to be guided by your judgment in the matter since it is one of our own mills and we do not anticipate using the device again."

* * *

[2553] Trial Examiner: General Counsel's L-22 is received.

* * *

822 is the general project number at the Research Corporation for machinery maintenance.

Q. The subject is "Roving Frame Bobbin Gear Setting Gauges."

You say in the first paragraph: "Some time ago we developed a gauge to facilitate the proper setting of bobbin gears on roving frames."

[2554] You go on to state that the use of the setting gauge virtually eliminated the uncertainty as to how much play was left in the gear pair.

"And we set up a tolerance of a maximum play of one-quarter inch as indicated on the gauge."

"It has come to our attention that some mills are misusing the gauge and jamming the bobbin gear into the bobbin drive gear so no play at all is allowed and actual metal to metal interference occurs."

Q. How did that come to your attention? A. In the course of visiting one of the mills, Lockhart, I believe, an overseer there stated to one of our men that the gauge wasn't any good. He said his men had been using it and it was still wearing out gears.

So he, the man in the Research Corporation, got the man with the gauge and took him out to the roving frame and watched him using it. And it was apparent that he was not using it properly.

Q. Therefore, you sent this memorandum to the mills advising them of the proper way of using it; is that right? A. On the basis that if one stockholder mill was using it wrong, then the chances are that others could be using it wrong.

* * *

[2562] Q. (By Mr. Dyer) Did DMRC send out a series of maintenance memos covering various topics such as inspection gauges for mote knives, and instruments for measuring hardness of rubber? A. There was a series at one time.

Q. How long did that series last? A. It went up through about number ten, as I remember; perhaps nine.

* * *

Q. Some of these maintenance memos covered supplies that you had on hand which might help various mills? A. I don't remember any that concerned supplies. Some of them related to developments which the Research Corporation had brought about, but no commercial items as such.

* * *

[2563] Q. (By Mr. Dyer) For instance, one states something like this: The Research Corporation has on hand several sets of inspection gauges for checking critical dimensions of the mote knives and the width of the slots and the mote knife brackets. A. We did send—we designed those.

Q. And you built them? A. Yes.

Q. And then you sold them to the mills? A. That is right.

Q. Were there other memos such as—the memos covering other topics of use to the mills, such as the one on the use of oilite and other centered metal inserts for repairing worn bearings on textile machinery? A. You say were there others?

Q. Such as this, yes? A. May I see that?

Q. Yes. A. Those could well have been another of that numbered series if we had given it a number. I consider this to be part of a series. There were others.

Trial Examiner: When you say series, you are referring to the maintenance memos?

The Witness: The one through ten that he referred to.

[2564] Q. (By Mr. Dyer) The one you have seen is unnumbered; is that right? A. That is right.

Q. After the numbered series, did you continue to send out memos bearing on maintenance problems to the mills? A. Yes.

Q. Mr. Milliken was sent copies of these maintenance memos; is that right?

Mr. Updike: You say would send?

Mr. Dyer: No. Was sent copies of these maintenance memos; is that right?

The Witness: Yes, usually.

Q. (By Mr. Dyer) Now, I have a memo in my hand dated May 23, 1956. Let me show it to you. It is addressed to various mills with copies going to Mr. Milliken, Subject: "Improvement on Roving Frame, Builder Motion."? A. Yes.

Q. Can you explain the background for this memorandum, please? A. The roving frame builder motion is a weak point in the construction of roving frames; and the Research Corporation developed an improvement on the builder motion to make it more reliable.

After we ran a test at one of the stockholder mills for nine months, we felt that we had a development which

was [2565] practical and, therefore, brought it to the attention of the other stockholder mills.

Q. In other words, the Research Corporation ran this test at Laurens Mills? A. Yes.

Q. And after finding what was practical, did you make the—well, I believe you sent out photographs of the improvement along with this memorandum, did you not? A. And a drawing also.

Q. Yes. And were the mills asked in this memorandum to submit orders for the parts so that the Research Corporation could put in one consolidated order? A. Yes. We acted as a clearinghouse for all the orders. Most of the time the Purchasing Department would do this.

Q. I point your attention to the last paragraph on the first page: "In order to take advantage of these quantity purchase discounts the Research Corporation will enter an order on June 2 consolidating all requests from the mills for these parts which have been received up to that time." A. Yes.

Q. "When a consolidated order is received, we will ship to the mills their individual requirements." A. Yes.

Q. Is that the way it happened? [2566] A. Yes, sir.

Q. Then did the Research Corporation bill the mills for the amounts? A. Yes.

* * *

Q. Did you thereafter make another inspection at the various mills? A. Of that type?

Q. Yes. A. Yes. We tried it again.

Q. And the same items were covered in, shall we call it the demeriting inspection, maintenance bench equipment, demeriting inspections being made by the mills themselves, the use of maintenance men, the number of cycles and cycle frequencies by maintenance men and the records being kept of maintenance; is that correct? [2567] A. That is correct.

Q. Were the results of that inspection made known to the various mills? A. Yes.

Q. Were they rated according to the progress they had made? A. I believe in the second round, so-called, we rated them on a ——

Mr. Updike: May I have the date of that, please?

Mr. Dyer: June 23, 1956.

The Witness: At one time we rated them on a numerical rating rather than a group one, two and three; but right now I am not clear as to which came first.

Q. (By Mr. Dyer) How many inspections were made of that type? A. I am sure of two, and I believe three.

Q. Let me hand you this. The title at the top says "Third". A. Yes. Then there was a third one.

* * *

[2569] Q. Now, in preparing a memorandum for distribution after one of the inspections, you used a numerical rating system at times. And at other times you used a chart system showing the progress of the various mills so that they could be compared one against the other; is that right? A. Yes.

Trial Examiner: Whichever system was used, the mills could be compared; is that right?

The Witness: Yes, sir.

Mr. Dyer: Yes, sir.

Q. (By Mr. Dyer) I may have asked this question before. Pardon me if I did.

The Research Corporation would inspect used machinery which one of the mills would wish to buy at that mill's request; is that right? A. Yes. That was a special arrangement when it happened.

Q. How was the mill charged for the service? A. They were billed for all out of pocket expenses, travel, meals, phone calls, any out of pocket expenses that were incurred as a result of the inspection.

Q. But they were not billed for the inspection itself? A. Not for the man's time.

* * *

[2582] *Redirect Examination*

Q. (By Mr. Dyer) Mr. McCullough, on that same subject let me ask you this: You mean you changed goals for individuals? A. No, sir. For individual machines.

Q. For individual machines? A. Yes.

Q. But then the goal for the individual machines was the same for all the mills, was it not? A. For any given machine the goal was the same, no matter where the machine was located.

* * *

Q. I see.

Now, going back to another point, you stated just a moment ago to Mr. Updike that the woolen and worsted group hadn't gotten into the demeriting inspection program too far; is that right? A. That is correct.

[2583] Q. Can you tell us why that was? A. We had to start somewhere. And we started with the group of mills which represented the biggest single homogeneous stockholder assembly. The cotton mills were the biggest single group.

Q. In other words, the system as it was set up by DMRC was set up first for the cotton department? A. For the cotton mills?

Q. The cotton mills, that is right? A. Yes.

Q. And then thereafter, some time later on, did you set up inspection systems for the woolen and worsted mills? A. We are working in the woolen and worsted—the woolen mills now.

Q. All right.

Trial Examiner: You are now working in the woolen mills, did you say?

The Witness: Yes.

Q. (By Mr. Dyer) Let me hand you Respondent's L-1. Can you tell us what parts were covered in this inspection? I think the words are "weave room parts." What parts are those? A. It says here "loom parts." And I don't know how to describe them any more simply than that.

Q. Are these loom parts—well, were you present in the room when Mr. Sterling Smith testified? [2584] A. Part of the time.

Q. Do you recall Mr. Smith testifying about studies that were gotten out in which comparisons were made of loom parts? A. Yes. I have a recollection of that.

Q. The comparison of cost of loom parts? A. Yes.

Q. Would those be the same loom parts referred to in this memorandum? A. Generally, yes.

Q. Therefore, there would eventually be no secret about it since the cost of the loom parts would be made known to all the corporations, would it not? A. I don't understand what your question is.

Q. Apparently in this memorandum Mr. Oeland says something about he just wanted to keep the cost of the loom parts something between DMRC and Darlington. But in

actuality, the cost of the various loom parts were made known to all the mills through Mr. Sterling Smith's report? A. Oh, I see.

Yes. I didn't at the time see the reason for secrecy. But it wasn't our place to question a request from a treasurer to keep it secret. There is one word in here that wouldn't apply to Mr. Smith, not specifically; and that is a breakdown. Mr. Toher was itemizing parts by name and number, as to which parts the mills were buying in greatest number and which parts they were breaking most frequently.

[2585] Mr. Smith didn't get that far into the internal workings of a mill. But he talked about classes of supplies, whereas we were speaking here of specific items.

Q. If I recall correctly the reports given out by Mr. Smith did give the names of manufacturers of the various parts and the costs.

Do you recall seeing such? A. Yes. On about, as I remember, perhaps fifteen or twenty items.

* * *

[2588] CHARLES GIBBS JOHNSON, was called to the stand as a witness, and having been first duly sworn, was examined, and testified as follows:

Trial Examiner: What is your full name?
The Witness: Charles Gibbs Johnson.
[2589] Trial Examiner: Where do you live?
The Witness: Greenville, South Carolina.

Direct Examination

Q. (By Mr. Dyer) Tell us what your relation with the Service Corporation is. A. I am presently Personnel Director of Judson Mills.

Q. Personnel Director of Judson Mills? A. That is right.

Q. In 1955 and 1956 what was your connection with the Service Corporation? A. I was Director of the Placement Department.

Q. And how many people were in the Placement Department at that time? A. There were two, and then three. I had a secretary; and I believe in December of 1955 one man was added.

Q. And who was that? A. W. M. Thornton.

Q. All right. Prior to your position at the Service Corporation, what had you done before that time? A. I had been Personnel Manager at Judson Mills.

Q. And prior to that time? A. I had been in the Deering Milliken Industrial Engineering Department. And then with Judson.

Q. In what capacity? [2590] A. In Industrial Engineering work.

Q. Had you been associated with any of the other mills, Deering, Milliken Mills, prior to that time? A. No.

Q. Now, when did you go with the Placement Department of Deering, Milliken Service Corporation? A. I went with the Placement Department in May, 1951. It was not a part of the Service Corporation?

Trial Examiner: It was what?

The Witness: May of 1951, the Placement Department.

Q. (By Mr. Dyer) What was the Placement Department at that time? A. Just a separate department.

Q. Of Judson Mills, or what? A. Functioning for some of the mills in the group for which Deering, Milliken is a sales agent.

Q. And when the Service Corporation was set up, then you became head of the Placement Department? A. That is right.

Q. Where is the Placement Department located? A. Their headquarters are in Greenville, South Carolina.

Q. Is that where Judson Mills is? A. Yes.

Q. What were the main programs of the Placement Department during 1955 and 1956? A. The Placement Department was a liaison between various [2591] colleges and universities throughout the Southeast and these mills or group of mills for which Deering, Milliken is a sales agent.

* * *

[2592] Q. (By Mr. Dyer) Now, in this analysis—well, let me ask this first:

Did Mr. Oeland ask you to make this analysis? A. If I recall correctly, I suggested it and told him what it would be, and he requested I go ahead with it.

Q. What was the purpose of the analysis? A. In the Placement Department I was interested in referring to the various mills men whom they might employ. And this was an analysis that I thought might be helpful to Mr. Oeland in determining the number of college graduates he might wish to employ, and giving him information regarding his supervisory force.

* * *

[2593] Q. (By Mr. Dyer) Did you make use of this analysis in attempting to find personnel requested by other mills? A. Not that I recall.

Q. Did you make similar analyses for other mills? A. For some of them, yes.

Q. Did you make such use of the analysis for other mills? A. No.

Q. One of your first recommendations is that Darlington should hire two trainees per year for the next two years.

On what did you base this recommendation? A. As I recall, this particular analysis—there was an organization chart drawn and in certain departments it showed that there was no one available to advance within the ranks of the department. And I felt by hiring trainees and bringing them along they would have potential supervisory people.

Q. Did you make any recommendation as to whether these trainees should have any particular type of background? [2594] A. No. That was up to the mill.

Trial Examiner: What was up to the mill?

The Witness: The background that the men that they employed had.

Q. (By Mr. Dyer) Now, there are some statements in this memorandum about "We should be more selective in the men to whom we make offers."

Did you mean that——

Mr. Updike: There is one such statement.

Q. (By Mr. Dyer) Did you mean that on a trainee basis or what? A. When I spoke of the trainee, I was speaking of a college graduate.

Q. Well, I am pointing you to the line marked two. A. Yes.

Q. Were you speaking there of trainees? A. Yes.

Q. In the paragraph numbered four, you state: "We should work toward the point where fifty percent of the

second hands and seventy-five percent of the overseers have promotional possibilities."

Was this recommendation made just for Darlington? A. That was a general point that was brought out, that or some similiar to it, in other analyses.

Q. I note in the first paragraph you say that the ratings of job performance and potential were made by you, meaning [2595] Mr. Oeland; is that correct? A. Mr. Oeland, correct.

Q. "Any rating is based largely upon personal opinion and is subject to later revision as we may either underestimate or overestimate a person's performance and potential."

Was the rating as such your rating? Or were you, again, referring to Mr. Oeland's rating? A. To Mr. Oeland's rating.

Q. Coming to the paragraph numbered four, you state: "Although only five of the present supervisors are judged to have reached their limit, only three are considered to have the potential to advance more than one step."

Who arrived at that judgment? Was that you or Mr. Oeland? A. Mr. Oeland made all the ratings.

Q. Is this conclusion yours or Mr. Oeland's? A. This conclusion I drew from Mr. Oeland's information.

Q. I see. A. It is not a conclusion. But it is a factual statement based on the data he gave me.

Q. In the paragraph numbered 6, it is actually two lines, you state: "Educational work must be done to attain wider acceptance of the college trainee program among all supervisors."

What did you have reference to? [2596] A. To me that is almost self-explanatory.

In some instances that is a general statement; in some instances there is a reluctance on the part of the textile industry to accept college graduates coming in.

Q. When you made this analysis did you talk to the supervisors at Darlington? A. No.

* * *

Q. Did a copy of your analysis go to Mr. Lowry? A. If at that time I was reporting to Mr. Lowry, it probably did.

Q. You mean the Placement Department did report to Mr. Lowry as head of Deering, Milliken Service Corporation? A. As head of the Deering, Milliken Industrial Engineering Department also.

Q. Was the Placement Department part of the Industrial Engineering Department? A. No, sir.

Q. I am a little bit confused. Why would such reporting to Mr. Lowry be done? A. I said "if". There was a period in there when I was reporting to Mr. Lowry, who had the Industrial Engineering Department and the Placement Department. And if I were reporting to him, I would give him a copy as a courtesy.

[2597] Q. (By Mr. Dyer) We have seen some of the points which you made—or rather the recommendations which you made. Do you recall any other recommendations which you made in this analysis? A. If I recall correctly, there were perhaps—there was a breakdown showing ages, educational level, and just factual information such as that taken right from the personnel records. But I do not recall any additional recommendations.

Trial Examiner: When you say taken from personnel records, whose personnel records do you mean?

The Witness: The individual's personnel records at the mill.

* * *

Q. (By Mr. Dyer) Where analyses of the type we have just mentioned were made at other mills, did your department keep copies of those analyses?

* * *

Q. (By Mr. Dyer) Where a mill such as Darlington wanted a particular type of personnel, would they sometimes make a request to you to see whether you knew of such personnel [2598] being available? A. Do you mean a college trainee?

Q. College trainee, yes, sir, for example. A. Well, they received lists of all the men I interviewed at the colleges with information regarding those individuals.

* * *

Q. (By Mr. Dyer) Now, in Mr. Oeland's letter to you he talks about discussing with Mr. Defore possible advantages of having one man working on a tension analyzer. He states that in the discussion Mr. Defore suggested the possibility of securing a cooperative student specializing in textiles.

He goes on to say: "We are wondering if it is possible to secure such a student and how we would go about it."

[2599] I am referring to GC M-2, his letter to you. A. Yes.

Q. He says: "It is not absolutely necessary that we get a textile student, but I do feel it would be well for us to get either a mechanical engineering or electrical engineering student."

He says: "It may be possible that we would have to pay more than our regular college trainee rate. We would be willing to do this for a period of time in order that we could get some idea of what the program would develop into."

And he asks for your suggestions and advice on the problem. A. Yes.

Q. Did you receive requests similar to this from other mills, from any of the other DM Mills? A. Very infrequently.

* * *

Does your Department keep track of the various cooperative students working in the DM Mills? A. We try to.

Trial Examiner: Cooperative students?

Mr. Dyer: Cooperative students, yes. By that term——

Trial Examiner: There has not been reference to cooperative students before this time?

Mr. Dyer: No, there hasn't been.

Q. (By Mr. Dyer) A cooperative student is one who works [2600] part time and goes to school? A. They work three months and go to school three months.

Q. And then repeat the cycle? A. And repeat the cycle. And then the fifth year they go nine months solid to school.

* * *

[2601] Q. (By Mr. Dyer) Had you known that in the past mills did borrow personnel from one another? A. I don't think you could term it borrowing.

Q. Well, I am using the phrase that you use in the memorandum. You say it might be possible that you could borrow their man for a definite period of time.

Had you known of such a thing being done? A. Employing for a definite period of time?

Q. Well, had you known of such a practice in the past.
A. No.

* * *

[2602] Q. In other words, Mr. Milliken made a request of Mr. Lowry who passed it on to you? A. Yes.

Q. What was the request? A. To get certain information about supervisors.

Trial Examiner: And trainees?
The Witness: Yes.

Q. (By Mr. Dyer) What was the certain information that [2603] you were to get? A. That is specified here in the memorandum. It would be name——

Q. Well, do these set out everything you were requested to get? A. Yes.

Q. The first is supervisors originally employed as college trainees and trainees presently working and employed through December 1, 1954, unless they reached a supervisory rank above assistant plant superintendent, to non-college supervisors at the level of overseer or higher who may advance within your unit or are capable of assuming greater responsibilities in another DM unit.

Three: Non-college supervisors at the level of second hand who are considered to have the potential to advance more than one level of supervision, for example Second Hand to General Overseer, Department Superintendent, or Assistant Plant Superintendent.

Did you supply a form on the back of this memorandum? A. Yes. It says the list was attached.

Q. All right. And then you get into the "General". "The column 'Salary' is to be left blank. This will be filled in later if the information is desired."

How was that to be filled in later? A. Through a direct contact with the mill.

[2604] Q. All right. Number two: "Where the information in our files was questionable or not available, the spaces have been underlined in red. Please see that these are corrected or filled in."

You did the memorandum that went to Darlington in this instance. Did you list all of the college trainees that you knew of in that memorandum who were working at the mill? A. We kept a record of the college trainees as they were employed.

Q. All right. And you listed those, according to your records, who were employed at Darlington; is that right? A. Yes.

Q. Now, you say "Where the information in our files was questionable or not available."

What information would that be that would be questionable or not available A. We depended upon the mills for information. In all cases we were not advised of men that they had employed or when the men that had been employed had left, and information of that sort.

Q. All right. You say "Please check job titles to see that these are correct."

In other words, you wanted to know whether the man would have been employed—or you wanted to know if the man who had been employed as a trainee had moved up to various jobs; [2605] is that the idea? A. Yes.

Q. "The information is to be as of March 31, 1955. Ages are computed to the previous birthday as of this date."

Well, how complete was the information to be concerning each individual? A. Name, job title, birth date and age. And as far as I recall, that is it. Plus the—

Q. Plus the man's potential; is that right? A. I don't recall the form exactly. But if I recall correctly, the actual listing on it showed that they had potential.

* * *

Trial Examiner: When you asked for potential, you mean you were asking for the mill's estimate of the man's potential?

The Witness: Yes, sir.

Q. (By Mr. Dyer) Now, the same information was obtained from all the mills; is that right? All the DM Mills, that is? A. I don't think that is correct.

Q. What ones were not included? A. If any were omitted, probably northern mills. But that I am not sure of.

Q. In other words, this was to be all of the southern mills; [2606] is that right? A. Yes.

Q. Now, was a report prepared from this information? A. As it says "by mills", yes.

Q. And was this report submitted to Mr. Milliken? A. I am not sure. Mr. Lowry had a copy. Whether there were two copies that were given to him or not, I don't recall

Q. When you speak of another DM unit—calling your attention to the first and second paragraph in number 2—do you mean by that all the other DM Mills, or DMSC, or DMRC? A. No. I am speaking there of the mills for which Deering, Milliken and Company, Inc. is a sales agent.

* * *

Q. Was a request for this information made to DMSC or DMRC? A. That I do not recall, Mr. Dyer. It could have been, or it could not have been.

* * *

[2608] Q. Who is Mr. J. A. Meehan? A. He was with the Woolens Division.

Q. He was with the Woolens Division?

Mr. Updike: No, not Division.

Q. (By Mr. Dyer) Woolen Mill? A. Yes, Woolen mill.

Q. Which woolen mill was that? A. He has Excelsior Mills in Union. His office is located there. He has general supervision over Hatch, Rutherford and Kingsley.

* * *

[2618] Q. Was Mr. Lowry the one who was handling the problem of getting I. T. T. students for the various mills? A. He and I together interviewed them.

Q. Interviewed the I. T. T. students? [2619] A. Yes.

* * *

Q. Was there a definite rate set for what should be paid I. T. T. students for summer work? A. A suggested rate.

* * *

Q. Whatever the rate was, was that the rate on which you talked to the various I. T. T. students? A. Yes.

Q. Were you authorized——

Trial Examiner: Suggested by whom?

Q. (By Mr. Dyer) Was the rate suggested by your department? A. Solely, no. It was one of those things that Mr. Lowry and I would discuss and which we would think it would take this and that. That is usually the way those developed.

Q. I see. Did the mills who were interested in getting I. T. T. students authorize you to offer those rates to the I. T. T. students?

* * *

The Witness: I would say they probably did, Mr. Dyer. Whether we got any or not that year I don't know.

* * *

[2620] A. Yes.

(General Counsel's Exh. No. M-10 was received in evidence.)

[2621] Q. Where did the data come from? A. From records maintained in the Placement Department's office.

Q. You state that following the meeting of July 17, 1956—was that a quarterly treasurers' meeting? A. So far as I recall it was.

Q. —one of the treasurers requested that we distribute the information that was presented at the meeting re trainees.

In other words, the information in this memorandum was gotten up by you for presentation at a treasurers' meeting; is that right? A. Yes.

Q. At whose request? A. Some of it was information that I thought should be presented. Some was suggested by Mr. Lowry.

* * *

[2623] Q. I note in your recommendation number six you talk about formalized training along lines of the report issued by Mr. W. M. Thornton issued May 21, 1956.

What was that report? A. The Placement Department once issued a report suggesting a training program at the mills. That is probably that report to which we are referring there.

* * *

Q. (By Mr. Dyer) Number 10, there you say: "Cross transfer mill to mill and group to group." A. Offer the men to go to be considered by another mill. That [2624] is what I mean there.

Q. I see.

And number, number 11, you state: "Do not release trainee for inadequate performance before checking other mills through Placement."

There is a difference there between those two; is that right? A. Yes. You mean between 10 and 11?

Q. Yes, sir. A. Yes.

Q. In other words, if there is a greater opportunity for an individual at another mill, he is to be transferred to the other mill; is that the idea? A. No.

Q. What is the idea? A. He is to be offered the opportunity for consideration for that opening.

Q. I see.

And the problem that brought about this memorandum, was it, was that the mills were losing too many trainees?

Mr. Updike: I object to "the mills losing too many trainees."

Q. (By Mr. Dyer) What was it that brought about the memorandum? I will leave it at that. A. To make suggestions to these various mills for which Deering, Milliken and Co., Inc. is a sales agent, so that [2625] they

could do a more effective job of employing college graduates and also a more effective job of retaining those men after they were employed.

* * *

[2627] Trial Examiner: Mr. Dyer was referring to the second page of GC M-10, which refers to GC M-11.

Q. (By Mr. Dyer) Was this formal training program gotten up solely by Mr. Thornton or did you help him with it? A. I helped him with it.

Q. And this was submitted to all the mills; is that correct; all the DM Mills? A. It probably did not go to Maine mills. It was submitted to all the mills in the South for which Deering, Millliken sells.

* * *

Did you and Mr. Thornton initiate this idea of a formal training program? A. I believe so.

Q. Let me ask you this: Is the copy of this formal training program such that it could be adopted at all of the mills? [2628] A. The best way to explain that, Mr. Dyer, is to say it is a skeleton upon which a body could be built by any of the mills.

* * *

[2630] Your paragraph number C under number 3 "Training" says "In those mills where department rotation is adopted, this procedure should be followed in each department."

Which procedure are you talking about there? Is that the procedure outlined in "B" above that? [2631] A. I will have to read that.

Yes, it is.

Q. All right.

In paragraph "D" you stated: "It may be well to either begin or end the training with an assignment in the IE Department."

That would be the Industrial Engineering Department at each of the mills? A. Yes.

* * *

[2632] Q. Paragraph "e" states: "After the trainees have been in training a few months, they may benefit from JIT and JRT."

What are JIT and JRT? A. Back during World War II there was government training within industry. And they put on what were known as the "J" progams. There was JIT, which was Job Instructor Training which was available to industry all over the country. And JRT which was Job Relations Training. And JMT was Job Methods Training.

Q. I see.

Your paragraph "f" states: "After the trainees have been in training at least six months or have been promoted to a supervisory position, they may benefit from the Supervisory Training offered by DMIED."

What is that? A. The Industrial Engineering Department of the Service Corporation conducted some training sessions which were made available to the mills to use and not to use as they wished.

* * *

[2633] Then on the back page is a sample trainee merit rating. Was this devised by you and Mr. Thornton? A. I believe Mr. Thornton devised that.

Q. And this was a sample which the various mills could use in rating the trainees? A. In rating the trainees at their particular plant.

Q. And was it the recommendation that each Department supervisor where the trainee worked complete one of these forms for submission to the plant manager? A. [2634] That was the suggestion, yes.

* * *

Q. (By Mr. Dyer) Do you know what the Management Development and Training Program was? A. Yes.

Q. What was that? A. It was a program that we developed in the Placement Department with Mr. Lowry's help which gave what we felt was a logical approach that would help individual supervisors develop so that they could handle greater—that is, do a better job where they were, and if they had abilities, enhance [2635] those abilities so they could assume greater responsibilities. And that program was made available to the individual mills as they wished it.

Q. Well, what did it encompass? A. A presentation showing what was expected to be accomplished by the program. And that was followed up with an appraisal of the individual by his—with an appraisal of the individual supervisor by his superiors on his strengths, areas of weakness, and how they could be overcome, or how he could get training that he had not had.

Q. Were there any particular points of emphasis in the program that you recall? A. We emphasized that it was a program to help individuals.

Q. Well, did you emphasize anything in their help such as outside training or inside training? A. That could be, Mr. Dyer.

If you will go back, it was somewhere in here that you said training is an individual matter.

Q. Yes. A. And other persons—or some persons need training and other persons need something else. Training has to be on an individual basis.

Q. Well, the program as such, was it flexible enough to take care of any individual supervisor at any mill? A. It gave a——

[2636] Q. Or was it a general picture? A. It gave an approach that could be used.

Q. I see. A. It is very similar to program used by General Electric, General Motors, and larger industries all over the country.

Q. Now, where this program was being developed, did you or Mr. Thornton give that program at the individaul mills? A. He or I would make the presentation and ask the mill whether or not they wanted to go ahead with it.

Q. I see. Who thought up the idea for the Management Development and Training Program? A. I don't know. In the Service Corporation a number of people had been talking about it. And Mr. Lowry told me to go ahead with it. That is the way it was.

Q. I see. A. It is a thing that has been written up in many magazines, newspapers, books. It is nothing peculiar to the Deering, Milliken Service Corporation or any one of the mills.

* * *

[2637] Trial Examiner: GC M-12 is received

* * *

Q. (By Mr. Dyer) Now, before we go into this memorandum too far, let me ask you this: One of the main functions of the Placement Department, I think you have testified, is contacting colleges and trying to arrange for selected people at these various colleges to be interviewed

with a view to hiring them at the various mills or having the various mills hire them; is that right? A. I made no selection.

Mr. Updike: The question is stated in a disjunctive, with a view to (a) or to (b) is the way you stated it. Can't you rephrase it?

Mr. Dyer: All right.

Q. (By Mr. Dyer) One of the main functions of the Placement Department is contacting colleges for prospective graduates is that right? A. Correct.

Q. In doing so you have to set up quite a program; is that right? A. That is right.

Q. And is this memorandum designed as an outline of the things to be followed in the college recruitment program? [2638] A. Yes.

Q. Now, were the various mill heads, treasurers, or managers asked by you to act as sponsors for dinner meetings or other type of meetings at the various colleges? A. They were requested to act as sponsors and then were requested to attend dinner meetings or accompany me to the schools, yes, sir.

* * *

[2639] Back here I think you have a Schedule A. It is approximately four pages back. There is a number written on the bottom "111". You show the schools, the president, Placement Director, People I Know Well, and the sponsor assigned. That is two pages.

Those are the schools to which the recruitment tour was planned; is that right? A. I didn't understand the question.

Q. These are the schools to which your recruitment program was pitched; is that correct? A. For this year, yes.

* * *

[2641] Trial Examiner: Just a moment. In (7) you refer to "men from the groups." Which men are these?

Mr. Dyer: The men from the groups is indicated in—well, let me ask the witness.

Are they groups of students?

The Witness: Yes, they are the groups of students.

* * *

Now, you have told us about the management Development and Training Program. What is the Management Development [2642] and Training Committee? Is that the members you indicated before? A. I can recall those. I am not—I believe that was the same committee, but I am not sure. I didn't recognize that Training Committee fully. But the Management Development and Training Committee I recall, though.

Q. Do you recall the members of that committee now? A. Yes, sir. Mr. W. A. L. Sibley, Mr. A. B. Sibley, Mr. J. A. Meehan, Mr. J. J. Norton, Mr. M. C. Stone, Mr. C. M. Lowry, and Mr. Roger Milliken.

* * *

Trial Examiner: Do I have a correct picture of this: A given treasurer, or a treasurer at a given mill is to serve as sponsor for interview and discussion with prospective graduates; is that correct?

[2643] The Witness: Mr. Buchanan, he was to serve as sponsor to assist the Placement Department.

Trial Examiner: Yes. All right.

And the men who would do the recommending—the Placement Department would recommend; is that right? You would make recommendations with respect to these trainees, or graduates I should say?

The Witness: This was a special thing. It is not the way it was carried on the year round.

Trial Examiner: Well, I am speaking of this special thing.

The Witness: The information regarding those men would be made available to at least two mills for their consideration for employment of that man if they could interest him.

Trial Examiner: That is what I was getting to. The information would be made available to mills other than that which the treasurer represented?

The Witness: Yes, sir.

* * *

[2645] Then you have listed several schools. And then various mill names. Now, are those the mills which you suggest that the people from those schools will tour? A. That is right.

Q. And under certain of the schools I see no mills listed. Is there any particular reason for that? A. It is a question there, Mr. Dyer, of geographic location.

* * *

It says: "Following is a list of Presbyterian College graduates hired and retained in the Deering Milliken organization 1945 to 1955, by year and mill:" A. That was addressed to Mr. Oeland, that is right.

Q. Since he was the sponsor of Presbyterian? A. Yes.

* * *

[2646] Now, in preparing this memorandum, did you give information about the college such as you have given here about Presbyterian to other sponsors who had other colleges for which they were sponsors? A. This same general type of report was used for all sponsors, yes.

Q. All right.

Now, you talk about students being interviewed on campus. Were those students that you had interviewed prior to this time? A. Yes.

Q. In other words, this was a follow-up program; is that right? A. Follow-up and intensifying.

Q. Then, is it true to state that prior to this date, March 28, 1956, you had visited and talked with students at all of the colleges listed in this memorandum? A. It is a majority of them.

* * *

[2650] Q. (By Mr. Dyer) Mr. Johnson, Mr. Oeland makes mention of inviting—well, he starts by saying:

"I would like to confirm my telephone conversation of this morning in which I stated that we would extend invitations to the five students whose names you listed to meet with the writer and others of Deering, Milliken at the Mary Musgrove Hotel for luncheon at 12:30 Friday the 20th."

Are the others of Deering, Milliken whom he refers to the names listed below: M. W. Brown, K. M. Lowry, C. G. Johnson, and W. B. Ketchum? A. I am not sure whether that is all of the people he wrote at his various mills for which Deering, Milliken was the sales agent or not, as well as the Service Corporation.

* * *

[2653] Q. Let me put it this way: Where, say, one of the individuals from Presbyterian was invited to both

Laurens and Darlington and neither mill was interested, would the man's name be [2654] circulated to two more mills? A. His name would be circulated to all of the mills in this group for which DM is the sales agent.

Q. I see. A. In the South.

Q. And along with his name would the record of your interview and the recommendations on the man be circulated? A. If I had interviewed him, yes.

Mr. Updike: Is there any evidence that you recommended anybody? I haven't understood that.

Mr. Dyer: I am not talking about recommendations to hire. I am talking about recommendations as to whether the individual had qualifications to be hired.

Q. (By Mr. Dyer) Did you understand me when I was speaking of recommendations that way? A. I answered your question as referral. I referred the names of these men to all the mills.

Q. Where you had an interview with a particular individual—I think you interviewed these people at Presbyterian. You interviewed some six of them? A. Yes.

Q. Would you write up a report of your interview to be circulated to the mills?

Mr. Updike: We have an illustration of one of these things right in the material that you have got.

[2655] Mr. Dyer: I am not sure that is the same thing. I am trying to find out.

The Witness: Each man would be requested to fill out an interview record containing certain information, birth date, and so forth, and name, and I

would add comments to that and circulate it to the mills in a duplicated form.

Mr. Dyer: All right.

Trial Examiner: Circulate copies to whom? Did you say to whom?

The Witness: To the mills for which DM is sales agent.

* * *

[2657] Trial Examiner: GC M-17 is received.

* * *

Q. (By Mr. Dyer) You state in the opening paragraph —well, by the way, the subject is listed as Employment of Undergraduates for Summer Work.

In the opening paragraph you state: "We have been requested to present some information to Mr. Milliken at a meeting April 24, 1956. Will you please fill in the information requested on the attached sheets and return one copy to the Placement Department so we may have it by April 21, 1956, if at all possible?

"It is suggested that we concentrate on Juniors who may be available for employment upon graduation."

Exactly what was the information Mr. Milliken requested? A. That I do not know. This form is filled out. And what was requested would be included in this. Whether this is more than he requested or not I do not recall.

Q. Well, was Mr. Milliken's request made to you or to Mr. Lowry? A. It would be Mr. Lowry.

Q. And did there come a time that Mr. Lowry informed you what information was needed? A. He would tell me in general, yes.

Q. And you prepared the form on the attached page?

[2658] A. I did, or someone in the Department did.

* * *

Trial Examiner: GC M-18 is received.

* * *

[2659] I might ask: Did you write this memorandum, sir? A. Yes.

* * *

[2660] "3. Following the interviews, selected men will be invited to tour several of our mills during February and March at our expense."

At whose expense was that? The Placement Department?

* * *

[2662] In the recruitment program for 1957, one of the main differences is that you added a co-sponsor; is that right, [2663] to the sponsor.

Mr. Updike: Well, I think there are a number of differences, Mr. Dyer. And I don't think it is fair to ask the witness to compare two things a year apart unless he is given an opportunity to go over them in some detail.

Q. (By Mr. Dyer) Well, let's just say one of the differences. Is that right?

Mr. Updike: I will stipulate that that is one of the differences.

Mr. Dyer: All right. Fine.

* * *

[2664] Q. (By Mr. Dyer) Is that a follow-up of number 4 in the previous page?

In other words, where you refer to selected men, do you mean men who have been asking to go on a tour? A. Yes.

Q. All right.

As far as the men are concerned who are asked to go on a tour, was it the Placement Department that asked that these men go on tour, or what? A. I invited them.

Q. All right.

Who else knew of the invitation to the men besides yourself?

Trial Examiner: Excuse me. Which men?

Mr. Dyer: Men who were invited to go on a tour of the mills.

Trial Examiner: You mean undergraduates?

Mr. Updike: Prospective employees; students who are prospective employees; is that right?

Mr. Dyer: Yes.

[2665] The Witness: Who else do you mean? At the school, or what?

Q. (By Mr. Dyer) Who else among the mills? A. I issued the invitation to the mills advising them where they had been invited and advised the various mills after the fact.

Q. In other words, you would invite the men and then you would tell the particular mills to whom they were going to tour that you had invited these men to tour those mills; is that right? A. We would give a list of the men who accepted the invitation.

Q. To whom? A. To the mills they were going to tour; and if any of the other mills were going to have

sales representatives there, they would be given that information too. We would usually carry that to a luncheon or dinner meeting and hand them that list of names.

* * *

[2666] Trial Examiner: GC M-19 will be received.

* * *

Q. (By Mr. Dyer) Is this a further memorandum to [2667] make more definite plans? A. If you will refer back to GC M-18, paragraph number 1, starting at the bottom of the first page and the second, this is clarfying that, or carrying it further.

Q. In the second paragraph you state—and I am referring to GC M-19—"The schools are anticipating this visit so as a schedule has been prepared that we may have from 6 to 8 DM representatives at each school, with the exception of U. S. C. and Clemson where 10 and 15 respectively are scheduled. Each sponsor and co-sponsor has been scheduled to attend from 4-6 of these meetings. Some other members of the organization have been scheduled to attend a limited number of the meetings also."

When you speak of DM representatives, are you referring to DMRC or DMSC? A. I am referring to people from the Research Corporation and the Service Corporation and also to the people from the mills for which Deering, Milliken and Co. is a sales agent.

* * *

[2668] Now, Mr. Johnson, did you make the arrangements for the dinner meetings that were held? A. Yes.

Mr. Dyer: I offer GC M-20, which is a lengthy memorandum, a memorandum with an attached schedules, dated September 24, 1956, from Mr. Johnson, addressed to various mill treasurers, with courtesy copies going to Mr. Lowry, Mr. Minot K. Milliken, Mr. Roger Milliken, and A. R. Schuman.

* * *

Q. (By Mr. Dyer) Let me ask you first who Mr. A. R. Schuman is? A. Mr. Schuman is with Deering, Milliken and Co., Inc. in New York. He was at that time.

Q. Do you know in what capacity he was connected with them at that time? A. He was office manager at that time.

Q. Was he invited to participate in these tours? A. No.

Can you tell me why you sent copies of this material to him? A. Because Deering, Milliken and Company, Inc. would have a [2669] man at the schools recruiting at times. And he would try to arrange to be there at the same time I was there.

* * *

Trial Examiner: I don't know whether this is material, but the question has been asked. This still doesn't explain why this copy went to Mr. Schuman.

The Witness: He would usually arrange the interviewing schedules for Deering, Milliken and Company, Incorporated. This was for information so he could coincide the schedules with my visits.

* * *

[2671] Trial Examiner: GC M-21 will be received in evidence.

* * *

[2672] Q. Now, on the succeeding two pages you have a number of points.

Can you tell us how you arrived at these various points? A. If you will notice on the first page there, Mr. Dyer, it was brought out that the mill personnel can do much to keep the men they want. In the listing of items or factors mentioned in the mills there is some overlapping. "A review of these factors may bring out some points that will be of assistance in your training program."

These are those factors that were brought out by the personnel of various mills.

Q. In other words, this is a conglomeration of all the things mentioned at all the mills; is that right? A. That is right.

Mr. Schoemer: Combination, you mean.

[2673] Mr. Dyer: Yes.

* * *

[2674] Number 40 again states "If there is a trainee a mill particularly wants but cannot meet salary requirements for fear of disrupting present scales, have I. E. D. employ him for six months, with the mill footing the bill."

* * *

[2676] Where would that individual be working? At the DMIED or physically located at the mill? A. The Deering, Milliken Industrial Engineering Department. The Industrial Engineering Department of the Deering, Milliken Service Corporation.

Q. Well, can you tell us how the suggestion would work out when it came down to an actuality? A. It never came to that point.

Trial Examiner: Well, it never came to that; but what isn't clear to us is this: We do not know what you had in mind when you made this suggestion.

Mr. Updike: It wasn't his suggestion. I don't think it could be clearer than that this came from the people in the mills.

Trial Examiner: This is the witness' report?

[2677] Mr. Updike: Compilation.

Trial Examiner: That is right. Report of suggestions made.

Mr. Updike: Yes, sir.

Trial Examiner: And as he reported this suggestion—we are referring now to number 40—what did this mean?

The Witness: "If there is a trainee a mill particularly wants but cannot meet salary requirements"?

Trial Examiner: Yes.

The Witness: If there is a man a mill wanted, and they did not feel that they could offer him a salary that would attract him, they could recommend that the Industrial Engineering Department of the Service Corporation employ him, and then later he could be——

Trial Examiner: Where would he do his work?

The Witness: In the Industrial Engineering Department.

Trial Examiner: Not at the mill that wanted him?

The Witness: He might be there. Or he might be——

Trial Examiner: He might be any place else?

The Witness: That is right.

Trial Examiner: And later the mill might——

The Witness: They could make the man an offer. And if he wanted to accept that offer, then he had the choice to accept or reject.

Trial Examiner: This isn't to argue with you, but we are [2678] trying to understand the language here. The phrase "With the mill footing the bill" doesn't that mean that while he is working for DMIED, as you say, the mill would be paying his salary?

The Witness: That would be another service that the Industrial Engineering Department was performing for that particular mill. But there would be no guarantee that the man would go.

Trial Examiner: Now, it seems to me the mill would be performing the service for DMIED, if the man works for DMIED and the mill foots the bill.

The Witness: The Industrial Engineering Department would have another man available at that time, that is right.

The Trial Examiner: Well, maybe somebody can clarify this.

The Witness: Mr. Examiner, as I pointed out, this was never done; it was a suggestion that was made.

Trial Examiner: We understand that. You have told us this was never done. The question is what does this suggestion, which someone made, and which you set down in this memorandum, mean?

The Witness: It is a potential means of a mill eventually getting a man that they might not have been able to employ otherwise.

Trial Examiner: I can see how such an arrangement [2679] could be worked out. But I don't see how that arrangement is described by point number 40. Perhaps somebody else sees it.

Mr. Updike?

Mr. Dyer: Well, let me ask you if this is true: that a mill would naturally have certain salary amounts that they would offer to a graduate? Now, where a graduate was of particular value and they wanted to go beyond that salary amount, was this a device to get around that point so that DMIED would have him on its payroll for six months and then they could bring him into the mill as an experienced man and be able to pay him a higher salary than they would an ordinary graduate to which they would pay an ordinary entrance salary?

A. I wouldn't say it was a device, but it was a means that that could be done.

Mr. Updike: Was it also a means of getting a man six months experience with IED at the Service Corporation?

The Witness: Of quite valuable experience, that is right.

Trial Examiner: How? At the mill's expense?

Mr. Updike: At the mill's expense, because he was being trained somewhere else for the benefit of the mill presumably.

Mr. Dyer: The mill would be paying the amount of his salary while he was working on DMIED's payroll; is that right?

Mr. Updike: Exactly.

[2680] Trial Examiner: Is that what you had in mind? Would the mill be paying the man's salary while he worked at DMIED?

The Witness: Yes.

Q. (By Mr. Dyer) In other words, the money would be paid over to DMIED, and DMIED would turn around and give it to the man; is that right? A. The Industrial Engineering Department would be reimbursed for the money they paid the man in salary.

Q. All right.

Trial Examiner: Well, what this means to me is something which appears unlikely to me.

So that I am wondering whether I have the incorrect interpretation of this. The mill actually would be losing the man's salary for that period, wouldn't it?

It would not be getting his services. It might be getting an experienced man after he got the experience.

The Witness: It might be like paying a salary while he is going off to college.

Trial Examiner: All right.

The Witness: It is training.

Mr. Dyer: I think the witness also said possibly the man could be back at the mill under DMIED—on a project for DMIED; is that correct?

The Witness: Yes.

* * *

[2681] Q. (By Mr. Dyer) Now, in GC M-22, Mr. Johnson, you mention in the first paragraph the various plans which Mr. Sterling Smith wrote about for minimum

guaranteed weekly income; and in the second paragraph, you state "This plan is the one recommended by the Placement Department. Will you please write advising me if you will use this plan when [2682] employing trainees. We will need this information in the recruiting season that will start this fall."

You also ask for other information.

You state: "Starting salaries for college graduates will probably continue to increase for the 1956-1957 season. Will you also please advise me what starting rate ranges you will offer trainee applicants with Liberal Arts and Technical and Textile Degrees. We will get a better selection of men if our rates are more competitive with the other concerns that recruit. The Placement Department recommends monthly starting salary ranges of $350.00 to $375.00 for Liberal Arts graduates and $375.00 to $400.00 for Technical and Textile graduates."

Can you tell us how you arrived at those rates? Is that what you thought the going rate would be and what you needed in order to meet competition?

Mr. Updike: Who do you mean by "you"?

Q. (By Mr. Dyer) Are those the rates which you thought it would be necessary to offer men in order to meet competition? A. We had the information—we in the Placement Department had information of offers being made to college students all over the country, and this suggestion or recommendation was made on the basis of the trend in general.

* * *

[2684]. Q. (By Mr. Dyer) What amounts were you able to tell prospective applicants would be offered to them?

A. At the schools.I would tell the students that as they visit the mills they would be offered salaries that would vary from one of the mills to another in some instances. And if I recall correctly, in this year we used the figure that $350 will probably be the minimum. At no time was I able to quote "you will get such and such a salary" because it did vary all the time.

Q. Well, did you quote to Liberal Arts graduates that they would probably receive offers between $350 and $375? A. I believe that is correct.

Q. And to prospective graduates from the Technical and Textile graduates, did you quote to them that they would probably be offered salaries between $375 and $400? A. Yes. With exceptions.

* * *

[2685] Q. (By Mr. Dyer) Now, in GC M-24 Mr. Oeland is writing to you and stated: "We here at Darlington would like to get a master mechanic. When the job came open, we took it up with Mr. Bush's department. . ."

That would be the Engineering Department at Deering, Milliken Service Corporation? A. Yes.

Q. ". . . and they recommended Mr. Jimmie Wells who was a second hand at Gaffney. Jimmie came down and we hired him but shortly before he was to move an opening came at New Holland that he felt had better opportunities and he asked us to release him. We again have gone to Mr. Bush's department but at the moment they have no one to recommend for the job.

"We would appreciate your going over the list of the [2686] supervisors in the several mills and let us know if there are any second hands in the shops that the management of the mill feels would qualify for a promotion. We

will try to use this information in going back to management and asking them if they would consider letting us have the particular man. In giving us this information we would appreciate your giving as much detail as you have available on certain men."

Can you tell us what information you have about the "supervisors in the several mills"?

That is referring to the second paragraph of GC M-24. A. In the management development and training program, appraisals were made, and as men were appraised, we made those appraisals out in the Department that had copies of them.

Q. Did you get similar requests from other mills for personnel they needed? A. We would be asked for names of people that the management at the particular mills considered to be qualified for greater responsibilities. Very little came from it.

Q. Now, as GC M-25—well, did you make a separate reply to this letter, sir? A. I don't recall.

Q. GC M-25 refers to a master mechanic. Mr. Bush apparently had discussed the question with you; is that right? A. Mr. Bush and I visited Southern Technological Institute [2687] and saw some men. And at that time he mentioned that Mr. Oeland was hunting for someone for a master mechanic position.

Q. Actually you knew that from GC M-24, did you not? A. Yes.

Q. Did you and Mr. Bush discuss this particular gentleman, Roy Thomas Powell, as being a possible man for that job? A. Evidently we did.

Q. Did Mr. Bush make many visits to the schools with you? A. That is the only one that he ever made that I know of. And he was hunting for some men for his department at that time specifically.

Q. And Mr. Bush in GC M-25 mentions Charlie, referring to you—— A. That is right.

Q. —has sent Mr. Powell's application to you. But I would like to give you my opinion of the man.

Now, in the application that you sent to Mr. Oeland, was anything further included besides just the man's application? A. There would have been my comments regarding the man, written on the interview record.

Q. All right. And GC M-26 is a reply—or it is a letter going to you.

Mr. Oeland states: "I am enclosing herewith the interview record of Roy Thomas Powell with regard to the master mechanic's job we have here at Darlington."

[2688] He states that they want somebody with mill experience. And he concludes: "We want to express to you our appreciation for your help, and trust that some of the other mills can avail themselves of the services of Mr. Powell."

* * *

Trial Examiner: GC M-27 is received.

* * *

Q. (By Mr. Dyer) In this memorandum you refer to a Mr. Wallace, apparently from Woffard College. You state that he is from Darlington and is interested in employment there.

Do you mean at the Darlington Manufacturing Company? A. That is correct.

Q. And then you state he is going in service.

You ask Mr. Oeland: "If you do not have an opening where you can use Mr. Wallace, Mr. Nicholson at Drayton would like to talk with him regarding employment."

Did Mr. Oeland reply to this memorandum? A. I don't recall.

Q. Did you refer the applicant to Mr. Nicholson at Drayton? A. I may have.

* * *

[2690] Trial Examiner: GC M-28 is received.

* * *

Q. (By Mr. Dyer) Now, this memorandum, Mr. Johnson, refers to Mr. Dan Arrowood of the Hartsville Mill having called "this office"—that is, the Placement Department—"and explained that he needed a college trainee who was ready for a second hand's job in the spinning room. He asked that we contact the other mills in the organization to see if they had such a man available.

"If you know of a man who could fill this opening, would [2691] you please contact Mr. Arrowood at your earliest opportunity?

"Thank you very much."

Did you receive similar requests from other mills? A. Occasionally, yes.

Q. Let me ask this: Was it the normal course of events to ask the mills to contact the other mill? Or would you ask the mills to contact you in regard to it? A. The normal course of events was to ask them to let the other mill know.

Q. I see. And were copies of such sent to your department so that your records could be complete? A. They would write saying we have no one, or give us copies of such correspondence, that is right.

Q. Where they did have someone, would they send copies of such correspondence to your department? A. Yes. That was infrequent, but it did happen.

* * *

Trial Examiner: GC M-29 is received.

* * *

Q. (By Mr. Dyer) Now, can you tell us what this list is? [2692] A. That is information taken from an interview record, plus additional information taken from a personal interview where such an interview was conducted. And this information was sent out to the mills for which DM and Company, Inc. is a sales agent for their consideration of the persons listed.

Q. Does the number indicate there were 170 previous such lists sent by your department to the mills? A. Yes.

* * *

Q. Is this a service which continued through 1956? A. Yes.

* * *

Q. (By Mr. Dyer) Where these lists are circulated to the mills, would you sometimes get requests from the mills for further information as to a particular person named on the list? A. Prior to this, Mr. Dyer, it had been understood that if a mill was interested in one of these men they were to make a direct contact with the individual.

Q. Now, these, I notice, were all college graduates; is that right? [2693] A. That is right.

Q. Did any of your lists contain people other than college graduates? A. There might have been a very few. But in the main they were college graduates either just out of college or just completing military service. There were a few exceptions. But the large majority were there.

* * *

[2695] Q. Now, can you tell us how often these lists are circulated? A. There might be three a week or there might be one a month. It depends upon the recruiting season and the number of people who come to the office for interviews.

Mr. Dyer, may I correct a statement I just made?

Q. Yes. A. You said did I ever send out any information regarding an individual who was associated with one of the mills for which DM is sales agent.

Q. Yes. A. On occasions there have been.

Mr. Updike: "In one of these lists" I think was his question.

The Witness: In a special listing?

Mr. Updike: Yes.

Q. (By Mr. Dyer) In a special listing. A. Yes.

Q. What would be the occasion for that? A. There might have been a reduction in operations, an operation cut out, or something like that, and they had no place for the man, and they felt that he had potential. And that would be sent to the mills for their consideration just as if he were a new employee.

* * *

[2696] Q. (By Mr. Dyer) Now, in GC M-31 you refer to a previous letter sent to these mills apparently describing West Point's cooperative training program.

By West Point you refer to West Point Manufacturing Company, I take it? A. That is correct.

Q. "And included were some suggestions that could be followed by the mills in our group to interest capable men presently in high school in the textile industry.

"We are unable to locate a copy of your reply to our re-

quest for your comments on the suggestions we made. Will you please have your secretary send us a copy as we wish to summarize your comments and suggestions."

Can you tell us what the purpose of the summarization was for? A. In requesting information such as this we always tried to [2697] make a summary of the replies that were received.

Q. Now, it was Mr. Milliken who described West Point's cooperative training program to begin with. A. I don't know whether we heard of that through Mr. Milliken or Mr. Lowry or one of the treasurers or what. I may have even heard of it at Alabama Polytechnic Institute where the program was carried on.

Q. Do you recall receiving a memorandum from Mr. Milliken with regard to a visit he made to West Point wherein he mentioned West Point's cooperative training program? A. Mr. Milliken said he either talked with someone or visited, yes.

Q. All right.

Was this letter, this initial request of yours for information, prompted by Mr. Milliken's memorandum? A. It probably was. I wouldn't say for certain.

Q. Was a report gotten up of this information? A. On the West Point's cooperative training?

Q. Well, on the comments and suggestions from the various mills, the various DM Mills? A. There was a summary made of the comments.

* * *

[2702] Q. (By Mr. Dyer) In your earlier testimony, Mr. Johnson, [2703] you referred to JRT and JMT and JIT institutes. A. Yes.

Q. I think you said they were conducted during the war. A. They were started during the war.

Q. They were started during the war? A. Yes.

Q. Did you get requests afterwards say in 1956, for such institutes to be conducted? A. There was one time that we got a request to find out if there was someone available who could conduct such an institute because TWI had gone out of business.

Q. TWI is what? A. Training Within Industry, from the government.

Q. Did you check around and find out if someone could hold such institutes? A. Yes.

Q. Were you able to set up such institutes? A. We found a man who could conduct one, yes.

Q. And did you circulate to the mills that you had a man—that you had found a man who could conduct them and he would be willing to on certain bases? A. That is right.

Q. And did you receive replies from the mills in regard to some of those? A. Some of them, yes.

[2704] Q. And was an institute of that type conducted? A. Yes.

Q. Now, in prior testimony, there was reference to Southern personnel managers' meetings. I believe it was stated that the personnel managers of the Southern DM mills had meetings on some sort of basis.

Did you attend such meetings? A. Some of them, yes.

Q. We have previously referred to the Management Development and Training Program. A. That is right.

Q. Did Mr. Thornton put on a program of such at Darlington that you recall? A. Yes, he did.

Q. And charges were made by the Placement Department for his services in putting on such program? A. That is correct.

Q. In the meetings that you attended of the Southern Personnel Managers can you tell us what some of the topics for discussion were? A. Training, some particular references to college trainees, and if they went in military service the best way to get them back, insurance, unemployment compensation, safety, workmen's compensation, general subjects such as that.

Q. Now, when Darlington was being liquidated, certain of the [2705] supervisory personnel were offered jobs with DMIED or the Research Corporation or other mills. Do you recall that? A. Yes.

Q. And did your Department act as a clearinghouse for those men going to other mills? A. Not entirely, no. We were in on it a little bit. But we were not "the" clearinghouse.

Q. Well, did Mr. Oeland keep you advised as to what the personnel had decided to do? A. In some instances, yes.

Q. And you passed that information on to the affected mills or DMIED or the Research Corporation? A. Where it was pertinent, yes.

* * * *

Trial Examiner: GC M-34 is received.

* * * *

[2706] Q. (By Mr. Dyer) On the first page you explain that the income data for engineers—apparently the engineers in industry—was gotten from the National Society of Professional Engineers.

Now, can you tell us where the information as to the average income of Deering, Milliken College Trainees came from? A. Each of the mills in this group for which DM is a sales agent here in the South was requested to supply this information regarding men who had started with them as college trainees.

Q. And can you tell us who, if anyone—well, can you tell us how this survey was initiated? Did somebody request that such a survey be made? A. This was an annual survey that was made, and it had been made for a number of years, Mr. Dyer.

As I recall it, it was developed to be used at the various colleges to show what men in textiles had done. And it was also given to the mills so that they could show men who visited them what had been done as far as progress being made was concerned.

Trial Examiner: Used as a recruitment aid?
The Witness: As a recruitment aid, yes.

Q. (By Mr. Dyer) And in compiling the figures for the Deering Milliken average income, did you just take the figures as [2707] supplied by the mills and average them out? A. Up to a certain point.

I asked for salaries up to ten thousand dollars and above that they said over ten, and we averaged that.

Q. All right.

Trial Examiner: Aren't they all over ten?
The Witness: Not the ones that they sent to me.

Q. (By Mr. Dyer) Well, let me ask you: the heading is "College Trainees versus Engineers in Industry."

The figures for Deering, Milliken average incomes, were those just for engineers or for all? A. They were for all.

Q. All college trainees? A. That is right.

Q. Now, when Darlington was in the process of liquidation, was your department asked to interview and evaluate the Darlington supervisory personnel? A. There were no interviews made. There were appraisals made.

Q. By your department? A. Yes.

Q. At whose request? A. Mr. Lowry's.

Q. And do you know whether the request initiated with Mr. Lowry? Did he tell you where the request initiated? [2708] A. The only thing I know is Mr. Lowry asked us to make that. Whether Mr. Oeland asked him to do it I don't know.

Q. What did the appraisals consist of? A. Mr. Oeland and his top supervisory personnel appraising the individual's potential and the kind of job they were doing.

Trial Examiner: Is that of all employees or of the supervisory personnel only?

The Witness: The supervisory personnel.

Q. (By Mr. Dyer) Did you take any part in the appraisal at all? A. No, I did not.

Q. What did you do? A. What did I do?

Q. Yes, sir. A. I assigned W. M. Thornton to that.

Q. What did he do in that process? A. Well, he visited Darlington and talked with Mr. Oeland. I don't recall who else he talked with. I know he talked with Mr. Oeland down there and Mr. Goodwin.

Q. As far as you know, did Mr. Thornton have any interviews with any of the supervisory personnel? A. With Mr. Oeland and Mr. Goodwin.

* * *

[2709] Q. (By Mr. Dyer) Did Mr. Thornton include any comments as to the personnel as to the appraisals? A. Well, that was what the appraisal consisted of, a series of comments.

Trial Examiner: Comments of his own?

The Witness: The comments he recorded were based upon what Mr. Oeland and Mr. Goodwin said.

Mr. Dyer: All right.

Q. (By Mr. Dyer) What was done with that appraisal? A. It was reviewed.

Q. By whom? A. Mr. Lowry. I reviewed some of them.

Q. What was done with the appraisal after it was reviewed? A. It was kept in the file.

Q. Was any circulation of it made? A. Not of the appraisal, no.

Q. Pardon me? A. Not of the appraisal, no.

Q. Was any circulation of the results of the appraisal made to any of the other mills or the Service Corporation or the Research Corporation? A. Yes.

* * *

[2710] Q. (By Mr. Dyer) What was done? A. It was circulated. He was a man who had certain information—or he had experience and background and he might be available for employment.

Q. Was that circulated to all the DM mills? A. I don't think so, no.

Q. Do you recall what mills were left out of that? A. Well, a man who has experience in carding, that would go to a mill where they have that particular operation.

Q. Did the Industrial Engineering Department have any part in the review of the appraisal? A. Well, Mr.

Lowry being in charge of the Industrial Engineering Department, reviewed the appraisal.

Q. All right.

Now, do you know whether the Industrial Engineering Department offered to take some of the supervisory personnel at Darlington and place them on the Industrial Engineering Department's staff for periods up to six months? A. I have heard that, yes.

Q. Do you know that as a fact? A. I assumed it was a fact. I heard it was a fact.

Q. Let me ask you this: Was it true it did not take effect in that the personnel so offered took jobs elsewhere? [2711] A. That must have been the reason.

* * *

Q. (By Mr. Dyer) Mr. Johnson, do you recall receiving mill policies on absenteeism from Darlington? A. A mill?

Q. Yes. A. Darlington sent me a copy of some policies. I don't recall that it was on absenteeism.

Q. Did they request that you review it and ask for your comments and suggestions as to the policy? A. It is possible.

Q. Did you receive requests from the——

Trial Examiner: Well, Mr. Dyer——

Mr. Dyer: All right.

Q. (By Mr. Dyer) It is possible, you say, but did it happen? [2712] A. This happened: Mr. Oeland at one time asked me to come down to Darlington and help them develop a policy on some subject. I forget whether it was tardiness or absenteeism or what.

And working with his supervisory group down there we developed a policy for Darlington Manufacturing Company. And subsequent to that, we started the development of a

policy. Subsequent to that I believe he sent me that particular policy for me to look over.

Q. All right.

Were you asked by other DM mills to help in setting up policies of that nature? A. No.

That is the only request I had of that nature.

Q. Did you receive copies of policies of this nature from other mills? A. Only when we requested them.

Q. Did you make a request for the policies of these other mills? A. On occasion we would ask for a particular policy.

Trial Examiner: Who would ask for a particular policy?

The Witness: My department would ask for a particular policy to review, it, and to see what was being done at that mill.

Q. (By Mr. Dyer): Was that in the nature of a survey of the [2713] policies, or what? A. That is right, a survey of policies.

Q. Where you requested a policy from one mill or one corporation, would you request the same policy from other corporations for comparison value? A. I have done that, yes.

Q. Would you make comments to the mills in regard to the policies? A. Well, I remember making a survey on vacation policies.

Q. This was at all DM mills? A. Those located in the South.

Q. What did that survey consist of? A. Taking the policy and going through and seeing the various points that were covered in it.

Q. Did you write a report on that survey? A. I made a summary, yes.

Q. Was that circulated to the DM mills in the South? A. That I don't remember.

Q. What was the purpose of the survey if it was not being circulated to the mills? A. For information to see the variations that existed from one to another.

Q. Well, do you recall who requested such a survey be made? A. Yes. I think in talking with Mr. Lowry, during the summer months there wasn't a great deal of recruiting to do, and he [2714] said why don't you make a survey on some of the policies in existence to see the variations.

Q. Were reports made back to Mr. Lowry on policy variations? A. Yes.

Q. Do you know to whom else those reports went? A. No, I do not recall; it may have been circulated to them. Now, wait a minute. Yes, I do recall. There was a large sheet where we put down the various mills and listed variations and sent it to the mills for——

Mr. Updike: Is this with respect to vacations?

The Witness: Yes.

And we sent it to them for their review. I do recall that, yes, sir.

Q. (By Mr. Dyer) Now, do you recall any other surveys that were made on various policies? A. No. Well, now, we have been talking about these trainees. We were constantly—not a policy, but we were constantly surveying practices followed by each of the mills regarding employment of college trainees.

Q. I am speaking about other policies such as those on absenteeism, or tardiness; did you make any surveys on policies of that type? A. I made no other surveys other than vacation.

* * *

[2719] Q. (By Mr. Janes) Mr. Johnson, I direct your attention to General Counsel's Exhibit M-5 which relates to the trainee agreement and ask whether you as director of your department prepared that trainee agreement. A. Yes.

* * *

[2720] Q. (By Mr. Janes) Mr. Johnson, the usual salary agreement would contain terms of the amount of the salary, days of leave, being away from the plant for various reasons such as you indicate in the second paragraph of this agreement; isn't that so? A. Mr. Janes, this was an agreement drawn up so that we could pay these college trainees in conformance with wage and hour regulations.

* * *

[2725] Q. In connection with the advice or instruction given by the treasurer, was it along the lines that if there was a trainee a mill particularly wanted but could not meet the salary requirements for fear of disrupting present scales that the IED would employ that trainee for a six months period with the mill to foot the bill?

[2726] Mr. Updike: I object to the form of the question. It contains the disjunctive—"advice or instruction".

Mr. Janes: I will amend it to read as "advice".

* * *

The Witness: If you want to call a suggestion advice, I would say yes to that answer. That was a suggestion of a possible way of working a particular situation. It was never done to my knowledge.

* * *

Cross Examination

[2728] Q. (By Mr. Updike) Mr. Johnson, looking at your activities at the placement department in a general, overall way, based on your testimony of yesterday, would you put the activities into groups for the Examiner, please? A. Mr. Updike, the primary function was liaison work with the colleges and universities, making arrangements to visit various institutions of higher learning, going there and interviewing men who wish to talk with me.

Q. May I interrupt for just a second?

Preparatory to the actual interview, is this liaison work designed to produce students to be interviewed? In other words, one segment of work designed to produce persons to be interviewed? A. Public Relations work with the colleges and universities to interest students, yes, sir.

Q. All right, sir. Will you please continue with your interview work and what you did about that? A. Interviewing the students. And after they completed an interview record, taking information from that record, [2729] plus my personal comments, and sending those to the various mills for which D-M is a sales agent.

Q. Now, so that the record will be clear, I show you General Counsel's Exhibit M-29, and I ask you if that is illustrative of the kind of information that you gave with respect to students that you had interviewed? A. That is correct. There were some instances where just a man's name was listed if he said I am not interested in the kind of work that there is available, or things of that type. But this is a good example of the information that was sent out.

Q. What are the next steps, sir, following the sending out of the information? A. There was a certain amount of reporting and statistical information. In the department we attempted to keep track of the men who were employed as college trainees and what happened to them by direct con-

tact with the mill. So, statistical information was compiled and reports made. There was a certain amount of public relations work with high schools, trying to point out to high school students the opportunities that existed in the textile industry and also particularly in this group of our stockholder mills. Most of that work was done at the specific request of a particular mill, or mill treasurer.

Q. All right. To what extent did your activities concern [2730] themselves with what happened to a trainee after he become employed? A. We attempted to keep a record by name of the men who were employed, listing it on a big sheet for each mill, listing what the position was he occupied. Once or twice a year that was checked with the mill. We put on there if he left that mill, or any interesting information about him that would help build up the statistical reports that we prepared periodically.

* * *

[2733] Q. (By Mr. Updike) Now, Mr. Johnson, in the course of reading from exhibits yesterday, Mr. Dyer read a good many phrases of yours such as "our organization", "the organization", "The D-M organization". And I think in one instance he read "The company". Do you recall hearing those? A. Yes.

Q. Then, sir, he also read from General Counsel's M-12. And this appears at page 4 of the exhibit under the section number 2, and the caption "Organization and Size."

I draw your attention specifically to subdivision "A" which reads: "Deering, Milliken, sales agent—28 units with 25 in South" and subdivision "B" which reads: "Mills have kept corporate identities and operate as separate units. Therefore we have advantages of large and small

organization." I also direct your attention to Section 4, subdivision "C" which reads "Men hired by one unit, not Deering Milliken."

Mr. Dyer: Would you complete the phrase?

[2734] Mr. Updike: I will in a moment.

Q. (By Mr. Updike) Now, I ask you, Mr. Johnson whether at the time when you wrote the memoranda, the other memoranda which were read from yesterday, you were aware of the facts, the corporate facts, if you will, with respect to Deering, Milliken and Company, Inc., the various mill corporations, and the Deering, Milliken Service Corporation? A. Yes.

* * *

[2736] The Witness: The answer is yes. In dealing with professors, students, and people from outside these corporations that we are speaking of, I always said Deering, Milliken and Company, Inc. as a sales agent for this group of mills, but that is quite a mouthful to say; and when talking to someone or writing to someone who was connected with one of these stockholder mills or with the Service Corporation or the Research Corporation, I abbreviated.

Q. (By Mr. Updike) The abbreviations to which you just alluded are the phrases such as "our organization" or "D-M Mills" and the others I mentioned a little earlier in my question; is that correct? A. That is correct.

* * *

[2737] Q. Now, sir, I turn to a different topic.

Mr. Johnson, I show you General Counsel's Exhibit M-1, which is a memorandum from you to Mr. Oeland on the subject of the analysis of the supervisory force at Darlington. You recall that you identified this memorandum of recommendations yesterday, do you? A. Yes.

Q. I now show you what purports to be Mr. Oeland's answer under date of October 18, 1955 and ask you if you can identify it. A. I believe that is Mr. Oeland's reply, yes.

Mr. Updike: I ask that it be marked Respondent's Exhibit M-1.

(The document above-referred to was marked Respondent's Exhibit M-1 for identification.)

Mr. Updike: Mr. Examiner, this exhibit is so short that I would like to read it. It is from Mr. Oeland addressed to this witness. It starts out "Dear Charly, will you please forgive my tardiness in not acknowledging before this time [2738] the survey of our supervisory group here at Darlington and suggested steps we should take to improve our situation. This study required a lot of time on your part and was well done. It pointed out to us some of the weak spots in our supervisory set-up. We trust that we can follow some of your suggestions to improve the situation."

* * *

Q. (By Mr. Upidke) Mr. Johnson, you have testified, sir, to the fact that your office endeavored to keep track of

trainees after they had been hired by one or more of the mills? A. That is correct.

Q. Now, I put the word "endeavor" in my question. I ask you whether as a matter of fact in your experience your records [2739] were complete and reliable? A. No.

Q. Now, would you tell the Examiner, please, the respects in which they become out of date or inaccurate? A. Although in the department we had requested that each mill notify us when a man, a trainee was employed, and requested they keep us up to date as to what happened to him, we found that in periodically compiling statistical data that we had to send requests out to the mill putting down the information we have and asking them to correct it and bring it up to date. There were very few instances where information came back to the mill that there hadn't been some change in the information that we had.

Q. Well, now, my question goes to: What were the occurrences at the mill which led to the outdating of your records? A. First of all they may have employed a man that we didn't know about.

Q. Was that a common occurrence? A. Yes.

* * *

Trial Examiner: When you say a man you are still speaking of trainees, are you?

The Witness: Trainees, yes.

The Witness: A man who had been employed may have been terminated. A man who was on the role of that particular [2740] mill may have been offered the opportunity to go to another mill and had been transferred and we would not have been advised. A man might have been promoted in a super-

visory capacity. He may have been, say, an assistant overseer and have been promoted to overseer or some other capacity. He may have been moved from the line organization to the staff organization of that mill and we wouldn't know about it until we requested they supply us with that information.

* * *

[2742] Q. (By Mr. Updike) Well just tell us what happened? The young man, you interview him, you put his record down on a piece of paper. Do you oversee him again? A. I might. But——

Q. Well, you might. But in the ordinary course? A. In the ordinary course of events, no. That information went to the mill. They were to make a direct contact with the man. And if they liked him, they made the job offer, and he accepted, notifying the mill that he accepted. And then the mill was requested to let us know that that had happened.

Q. And sometimes they did and sometimes they didn't; is that right? A. That is correct.

Q. But in any event, in your testifying yesterday with respect to the amounts that could be offered to students, to borrow a phrase, I think from Mr. Dyer's question, did you ever make a specific offer to any student or interview with respect to a job at one of the mill stockholders of your corporation? A. No. I offered a man in my department. But not the [2743] stockholder mills, no.

Q. In other words, where a person interviewed might be a candidate for a job in your department you offered him a job? A. Yes.

Q. But apart from that, and directing your attention to the stockholder mills, did you ever make an offer of

any salary to any of these persons interviewed? A. Not to my knowledge, no.

Q. So that where you were testifying yesterday to amounts of $325 to $350 a month for a liberal arts man and $350 to $375, or whatever the correct figures are in the record, with regard to a man with technical or textile training, those were ranges that might be offered to the young man if he was acceptable to a treasurer? A. Mr. Updike, it would have been impossible to talk with the boys at the school if you hadn't had some idea of the range that the mills were going to offer. And that was the range that they were expected to get at the mills; that is correct.

* * *

[2747] Q. Now, while we are on the topic, you just mentioned the term placement department. How did your department come to have that name, Mr. Johnson? A. Well, when it was first organized, it was organized as I previously testified as a liaison between the colleges and universities and these various mills for which Deering, Milliken is a sales agent. And there was quite a bit of discussion as to what might be a good name for the department. And inasmuch as each college and university has a placement department or someone who assumes the duties that are normally performed by a placement department, we say well since it is a placement department in the college, we will call it a placement department, because it is a liaison with the [2748] colleges. And actually when you think of it with respect to the work that is done by a college, it is a misnomer, because the department did not place. We were a liaison and referall department. College recruitment rather than college placement.

Q. The word "transfer" has been used by you in some of these memoranda. And I am not sure but what you have used it in your testimony as well. Did you ever transfer any employee from one mill to another mill? A. No.

Q. When you used the term "transfer" what set of facts do you describe? A. Mr. Updike, it was one of our sales points in talking with students at schools we pointed out that although they were employed by and would be employees of a particular unit, opportunities might be made available to them at another one of these stockholder mills. And as we described the process, we will say you are working at mill "A" and mill "B" needs someone with your qualification. The head of mill "B" will contact Mill "A" and say, do you have someone who could perform such and such kind of a job. Mill "A" would say yes, and they would send the man over to talk with the head of mill "B".

If the manager of "B" wanted to make the man a job offer, he might do so. If he did, the man might accept or he might not accept. The head of the mill where the man was [2749] working might say I think it is a wonderful opportunity; you ought to go. Or he might say you can go if you want to, but I would prefer that you stay here. It was left up to the individual. But if he did move from one stockholder mill to another, we referred to it as a transfer.

* * *

[2753] *Redirect Examination*

Q. (By Mr. Dyer) Mr. Johnson, in going to the various schools, say in 1956, have you noticed whether the schools post lists of the various companies which are there to interview graduates? A. Some of them post lists. Some of them have other kinds of information. It varies from

school to school. At smaller schools, you may not see anything.

Q. All right. In the larger schools they do usually publish lists of the various companies interviewing? A. They send out to their seniors this information.

Q. And have you seen any of those lists? [2754] A. Yes.

Q. And can you tell us how an interview by you would be referred to on the list? A. As the Deering-Milliken Service Corporation. Placement Department of the Deering, Milliken Service Corporation.

Q. Do you recall visiting Georgia Tech in February, 21, 1956? A. I don't recall having seen that. Mr. Ajax at Georgia Tech sends out an individual notice to each student. They have a student mail box system down there. That is, to each senior. He puts a notice in the mail box regarding the interviews.

Q. Have you seen those notices? A. I may have. I don't recall.

Q. I show you one dated January 2, 1956. On the back page—it is rather beat up—the reference is to "Deering, Milliken."

Mr. Updike: I object to the conclusion of this in this record since it is not something that emanated either from the witness or from any one connected with either of the respondents here.

Mr. Dyer: The witness has testified that the schools put out notices that it is Deering, Milliken Service Corporation.

Mr. Updike: You asked him what his memory was with respect to it.

The Witness: I have seen the Deering, Milliken Service Corporation on some of the notices.

[2755] Q. (By Mr. Dyer) Have you also seen "Deering Milliken" on some of the notices? A. It is possible.

Q. All right. I think you stated you never made an offer to any individual, any individual graduate, a direct offer of a job, is that right? A. I said I made offers for my department, but not for the stockholder mills.

Q. You didn't make any offers for stockholder mills? A. No.

Q. Were you ever authorized by any of the mills to make offers?

Mr. Updike: To college trainees.

Mr. Dyer: To college trainees, yes.

The Witness: There were two mill heads that said if you see an outstanding man, if you feel you wish to you may make him an offer. I never did because I didn't think it was my responsibility. I thought the mill should see him and interview him.

Q. (By Mr. Dyer) Which two mills were those? Do you recall? A. Yes.

Q. Which ones were they? A. Judson Mills where I had formerly worked. And Mr. Asnip. I believe at that time that Mr. Asnip was at Gerrish [2756] Milliken. And he and I had been closely associated over the years.

* * *

[2758] Q. In this trainee agreement you refer to the amount of leave. "You may take up to four days leave."

Is that something that is covered by Wage and Hours? A. It is something I was told within the Wage and Hours Regulations. I did not specify check the Wage and Hour on that.

Q. Mr. Sloan told you it should be covered; is that the idea? A. Yes. He said that that was within the rules and [2759] regulations of the Wage and Hour.

* * *

[2760] Q. (By Mr. Janes) While you were in charge of placement in 1955 and 1956, do you know whether there were any manuals or plant rules at any of the mill corporations that were serviced by the Service Corporation? A. Yes.

Q. At what plants? A. Judson Mills had an employee's hand book. Monarch Mills had an employee's hand book. I know those two. Drayton Mills have an employee's hand book.

Are there any others that you recall, Mr. Johnson? A. Darlington had an employee's hand book at one time. [2761] Whether they had it in 1955 and 1956, I don't know.

Q. Any others that you recall? A. No.

* * *

[2765] Mr. Updike: In view of your ruling, sir, instead of having the witness guess from memory, I will produce the employee booklets, if that is what the question was directed to.

Mr. Janes: The employee hand books of Judson, Drayton, and he mentioned possibly Darlington.

Mr. Updike: Monarch and Darlington if there was one.

Mr. Janes: Thank you very much.

* * *

[2769] Mr. Updike: Mr. Examiner, I would like it to appear on the record that in this luncheon recess we have gotten copies of an employee's hand book, if that is the right designation, with respect to Darlington, and another one with respect to Monarch Mills, which I now produce and furnish to Mr. Janes and Mr. Dyer. We have sent for copies of the Judson and Drayton ones, if they do exist.

Mr. Schoemer: There was no such book at either Hartsville or Gaffney during the time in question. In other words, no employee hand book.

Mr. Dyer: Mr. Phillips, will you take the stand?

Whereupon,

WILLIAM R. PHILLIPS, called as a witness, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Your full name?

The Witness: William R. Phillips.

Trial Examiner: Where do you live?

The Witness: I live in Montclair, New Jersey.

Direct Examination

Q. (By Mr. Dyer) You are associated with Deering, Milliken and Company, is that correct? [2770] A. That is correct.

Q. And in connection with that, after a conference between Mr. Updike, Mr. Schoemer and myself and Mr. Zimny, you were asked to get up some material in regard to what happened to the sales made at Darlington, is that right? A. Yes.

Mr. J. C. Harris asked me to make a study of that subject.

* * *

[2775] Q. (By Mr. Dyer) I refer you to page 3 of the first part of your report. A. Darlington sold some contracts to Monarch, and the item in question, the yarn numbers, filling yarn numbers of 26 might have been started up at Monarch at that time to fulfill those contracts. That may have been the application. I am not specifically certain that 26s were one of the filling yarns necessary to make the type of goods that were represented in those contracts that Darlington sold to Monarch. It could have been.

* * *

[2776] Mr. Schoemer: Well, I would much prefer, Mr. Examiner, if I may, that the witness be asked direct questions about the contracts in question rather than to have any statement of them read into the record by Mr. Dyer.

I think that perhaps you should understand how it happens that we are in the midst of this rather unorthodox procedure today. If I may take a moment I will explain to you how we have come to that position.

The issue that Mr. Phillips has been examining into is basically a two-fold one. What was Darlington's business at the time it was an active, going, concern, and what happened to that business after it ceased to be an active, going, concern.

Now, the answer to those questions is one that can be determined only after an examination of a really mountainous quantity of documents. In connection with the preparation for this case, when Mr. Dyer expressed an interest in pursuing that line of inquiry, and in fact in pursuance of the Union's original offer of proof in this case in which they said

that they would show that Deering, Milliken suffered no depletion in the quantity or varieties of fabrics which might be offered by it; Mr. Phillips was delegated to make the study which resulted in a draft report that he now holds in his hand.

[2777] The report was never put in final form, and basically it is only a set of working papers that Mr. Phillips prepared in order to equip himself for the testimony today. Because I am sure Mr. Dyer will not object if I say that he is not familiar with the details of this problem. Last night I furnished him with a copy of Mr. Phillips' working papers in order to facilitate his direct examination of the witness. I would like to state I did so not in the expectation that those same working papers would be used as a basis for quotations that would be made by General Counsel at this time.

In other words, Mr. Dyer has a right to pursue this inquiry as he is now doing, but the papers which he holds before him prepared by Mr. Phillips in order to get ready for this testimony, it seems, should not be read into the record in that form.

Trial Examiner: Let me say, Gentlemen, if the issue here is whether Deering, Milliken suffered no depletion in the quantity of its orders—is that the issue?

Mr. Schoemer: If you will bear with me, Mr. Examiner, I will get you the exact words.

Mr. Updike: Mr. Zimny's claim on the record.

Trial Examiner: Well is that substantially it?

Mr. Schoemer: Substantially, yes.

Trial Examiner: I am wondering now that

Counsel have [2778] some information if they could discuss that among themselves and see whether they can agree that the information available indicates one thing or another.

Mr. Janes: Where is that statement?

Mr. Schoemer: It is around page 243 of the record.

Excuse me. 247.

Mr. Schoemer: Do you suggest, Mr. Examiner, that we consult briefly with Mr. Dyer and Mr. Janes along those lines.

Trial Examiner: I can see the possibility. What the result will be I don't know. But it may be that figures will lend themselves to a single clear interpretation. And if that be so, we don't need all of these details.

Now I am not suggesting that that possibility will be realized. That might be over-optimistic. But I think it is worth a few minutes consideration.

Let's go off the record.

(Discussion off the record)

Trial Examiner: Let me say on the record: Apparently no stipulation has been arrived at to cover all of this. Has there at least been a limitation or a definition of the inquiry?

Mr. Dyer: Yes, there is a definition of the inquiry as to how far we will go in this attempt. It is a field that is fraught with a number of variables. And we will attempt to limit it.

[2779] Trial Examiner: Very well.

Mr. Dyer: I will disagree with one point previously made by Mr. Schoemer as to the offer of proof.

As far as the inquiry goes in this case, I understand that I am only limited insofar as the Board's order of remand goes and not strictly to Mr. Zimny's prior offer of proof.

Mr. Schoemer: Mr. Examiner, if I may, I will note that Mr. Dyer's position may very well be as stated by him. But from our point of view, when Mr. Phillips started on the task of assembling this information which he now has before him, a task that he began approximately six months ago, we then had as the canon, if you will, for determining the scope of the inquiry what Mr. Zimny had said back in 1957, that the Union intended to prove as to the fact that Deering, Milliken "suffered no depletion in the type and amount of products available for sale by it."

Mr. Dyer: It may be that the inquiry will still come within that. But I am just stating for the record that if it goes outside of that jurisdiction, I do not feel limited to it.

* * *

[2782] Mr. Schoemer: May I say something, Mr. Examiner, since I am responsible for the statement about the mountainous amount of material. I think perhaps a brief review of the steps we took to prepare for these hearings might be in order.

The first step was that Mr. Dyer notified us by letter of his desire to examine the very substantial quantity of records relating to Darlington and various other mills of Deering, Milliken, to the Service Corporation and the Research Corporation. Included among e categories of records which he said he

wanted to inspect were those which would directly relate to the sales made by the various other mills through Deering, Milliken after Darlington went out of business.

As a practical fact, we could have proceeded by accumulating what I have earlier characterized as a mountainous quantity of material and presented them to General Counsel and said here they are. But aside from the fact that the documents will be so voluminous, as so often happens to the untrained eye, they would be largely meaningless. Accordingly, Mr. Phillips was delegated to steep himself in those documents to learn what was in them, and, if you will, to distill from the documents certain ultimate facts. And I stress "ultimate facts" in contradistinction to conclusions.

[2783] Mr. Phillips is now prepared to testify as to what those ultimate facts are. And as I earlier stated, we have furnished to Mr. Dyer a summary of his statement as to what those ultimate facts are. I think you will find, Mr. Examiner, that with perhaps one or two exceptions, which arose during our recent attempts to negotiate a stipulation, that the answers that will be given by Mr. Phillips will not in any sense be equivocal; that he will be able to respond directly to all questions related to this issue as to the past, present and future of Darlington's business.

And I would hope accordingly that by reason of his great familiarity with the various records and his examination into the subject that he would be able to give the kind of information that you are looking for.

Now, if there is any question in your mind as to whether or not the actual records themselves are the best evidence of the facts, then I will say that we will have no objection whatever to making those actual records available. I must point out, however, that not only are they numerous, but they are geographically scattered over the states of the southeastern United States and also in New York City.

* * *

[2784] Q. (By Mr. Dyer) Mr. Phillips, as I understand it, there were four basic constructions which Darlington made which accounted for approximately 72 percent of its production. A. That is correct.

Q. And those are a 37½ inch, 3.90, 99 x 44 poplin; a 40-inch, 3.22, 109 x 46 poplin; a 40-inch, 3.33, 109 x 58 broadcloth; and a 39-inch, 4.17, 80 x 75 print cloth?

* * *

Now, of these four constructions, which of them were being run at either Monarch, Pacolet, or Gaffney at that time? A. At the time of the liquidation, the 37½" 3.90, 99 x 44 poplin was being run by the Monarch Mills; the 39", 4.17, 80 x 76 was also being run by the Monarch and Pacolet Mills. And the other two constructions were not then being run by another mill we represented.

* * *

[2785] Q. Were any of these four major constructions well, did Darlington have contracts on any of these four major constructions which it was not able to complete and which were sold to other mills? A. It had contracts on the 37½" 3.90, 99 x 44 poplin which were not completely filled and sold to the Monarch Mill.

It had some contracts on the 37½", 4.17, 80 x 75 that were not completely filled and sold.

Q. Is that 39" rather than 37½"? A. The poplin is 37½".

Trial Examiner: The first one—excuse me. Let's begin that again. I thought you referred twice to 37½ inch.

The Witness: If I did, I was in error.

The 37½ inch, 390, 99 x 44 poplin was not completely filled. Contracts for that construction were not completely filled by Darlington. And some contracts for some yardage [2786] was sold to the Monarch Mills. Similarly the 39 inch, 4.17, 80 x 76, there existed contracts which were not completely filled. And that construction was also sold—or contracts for that construction were also sold to the Monarch Mills.

* * *

Q. (By Mr. Dyer) Now a third construction was thereafter run at another of the mills; is that right? A. Yes. Subsequently a customer came to us to buy—with an interest in buying the 40" 3 yard——

Trial Examiner: You say came to us.

The Witness: Deering, Milliken, Sales Agent. With an interest in buying the 40" 3-yard 109 x 46 [2787] poplin which had lapsed into inactivity some time before the liquidation at Darlington. And we were able to persuade the Monarch Mills to undertake production of that construction. That was one of the constructions that had been completed in contracts some time prior to the liquidation. It was not an active going construction.

* * *

Q. Well, directing you to this particular cloth, 109 x 46, how long had it been prior to that time that Monarch had run that particular cloth? A. Monarch had not run that specific broadcloth—I am sorry—poplin prior to the liquidation of Darlington. Nor had any other mill represented by Deering, Milliken. It was a new fabric in the market, so to speak.

Q. How long was it after the liquidation of Darlington that Monarch started up on this cloth? A. It was a relatively short period of time. I believe it was a month or two.

* * *

[2788] Q. All right. Now let me direct your attention to the 40-inch, 333, 109x58 broadcloth; did Monarch in 1957 start making that particular cloth? A. Yes, they did.

Q. So subsequently to Darlington's liquidation the two cloths that weren't being made by any of the other mills at that time were picked up by Monarch and run. Is that right? A. Yes. But Monarch had been characteristic producer of the 109 sley broadcloths for many years prior to the liquidation.

Q. Not actually made that particular cloth. But had made similar cloths; is that the idea? A. We consider everything within the same sley and pickage requiring the same equipment as one basic fabric.

We might make 80 squares in widths from 27 to 60 inches or even 80 inches wide. But we consider it all the same construction.

Trial Examiner: Well what specifically was the difference or were the differences between these two constructions [2789] as we have described them here which Monarch started to make in 1957 and the related constructions as you have indicated which Monarch made before then?

The Witness: The difference of width only. The manufacturing equipment required was exactly the same.

Q. (By Mr. Dyer) Let me, Mr. Phillips, direct your attention to your chart No. 2 which is attached to the "A" part of this memorandum.

Actually Monarch had not made any broadcloths of the 109 variety or even of the 100 or the 112 variety or even the 80 variety since 1954; is that right?

Or 1953 was the last year it made any of the broadcloths? A. That is correct.

Q. As to the 99x44 poplin, Darlington produced that poplin from 1951 through its liquidation; is that right? A. That is correct.

Q. Monarch produced that poplin—or, was it the same poplin?

Was it the 37½ inch poplin or a different width poplin that Monarch produced, as shown in your chart? A. Chart 2.

Q. Chart 2, yes.

It would have been the same style but possibly a diffrent width; is that right? [2790] A. Yes.

Q. All right. They produced that style poplin in 1952 and 1953 but did not produce it in 1954 or 1955, and came back in 1956, is that right? A. Yes.

Q. Now, the amount that Monarch had of this order in 1956, was that a transfer—excuse me—was that a sale of one of Darlington's orders to it? A. No.

Or perhaps in part. The actual sales pattern was such that the Monarch Mill prior to the known liquidation of Darlington's made sales on its own of a quantity of these poplins in the amount of around 600,000 yards.

Q. Is that the order that you refer to somewhere in here as being placed on September 21 and September 24? A. Yes.

Q. Now is it true that this order was placed at Monarch at that time by Lowenstein because Darlington could not guarantee that it would be able to produce that amount of cloth since they were in the process of the Directors recommending liquidation and it hadn't been approved yet? A. That is right. The customer wanted to purchase the fabric and we could not guarantee him delivery at the Darlington Manufacturing Company. So he ended up buying them from the Monarch Mills.

[2791] Q. In 1957 Monarch produced about 4½ times as much of this same construction as they had in 1956, is that right? A. Yes. The actual figures are 2,852,000 yards as against 612,000 yards in 1956.

* * *

Q. Let me refer you to Chart 1. Correct me if I am wrong. During 1956 Darlington sold to one customer 4,387,000 yards of a 45-inch, 3.33 weight, 109 x 58. And that is poplin. A. That is a broadcloth.

Q. That is the broadcloth? A. Yes.

Q. All right.

And to another customer they sold the same cloth in the amount of 390,000 yards?

A. That is correct.

Q. To a third customer, they sold that same cloth in the amount of 900,000 yards? A. Correct.

Trial Examiner: Is that 900,000?

Mr. Dyer: That is right.

Q. (By Mr. Dyer) Going back to a different grade cloth of 40 inch 3.65, 100 x 58——

[2792] Trial Examiner: That is not one of these four you were speaking of?

Mr. Dyer: No, sir. This is another.

Let me go to another one first that we have been speaking of.

Q. (By Mr. Dyer) The 37½ inch, 390, 99 x 44, Darlington sold——

Trial Examiner: This is in 1956?

Mr. Dyer: That is right, sir.

Q. (By Mr. Dyer)—180,000 yards of that to a customer.

To this same customer Monarch Mills sold 456,000 yards. And in 1957 Monarch sold 530,000 yards of that same construction to this same customer. A. That is correct.

Q. All right. Now, going back again to the first customer that mentioned on this broadcloth, Monarch——

Trial Examiner: Are you speaking of the one that bought the 4 million and some odd?

Mr. Dyer: Yes, sir.

Trial Examiner: All right.

Q. (By Mr. Dyer) Neither Monarch, Pacolet or Gaffney made that construction in 1956. But in 1957 Monarch did make that construction and sold 10,550,000 yards of that construction to that customer? A. That is correct.

[2793] Q. To the second customer on this same goods where Darlington had sold 930,000 yards, Monarch—neither Monarch. Pacolet or Gaffney made that construction

in 1956. And in 1957 Monarch sold 1,500,000 yards of that construction to that same customer? A. That is correct.

Q. Now to the third customer mentioned, there were no sales of that particular grade of cloth in either 1956 or 1957 by any of the three mills we have mentioned, is that right? A. That is correct.

Q. We have already covered the other one here. Now as to another grade of cloth at 40 inch, three hundred weight, 109 x 46; in 1956 Darlington sold to customer No. Four,—641,000 yards of that.

Mr. Dyer: That is customer number four. I mentioned four different customers.

Trial Examiner: 641,000 yards?

Mr. Dyer: Yes.

Q. (By Mr. Dyer) In 1956, neither Monarch, Pacolet or Gaffney made that construction. But in 1957, Monarch started on that construction and made—was it 29,000 yards? A. Correct.

Q. For that same customer? A. That is correct.

[2794] Q. There was one other cloth, that being a 40-inch, 3.65, 100x58; in 1956 Darlington sold to customer No. two, 69,000 yards of that cloth. There were no sales by either Monarch, Pacolet or Gaffney on that particular cloth to that customer.

And in 1957 Gaffney sold to that customer 855,000 yards of that same cloth? A. That is correct.

Q. Gaffney had made that—well let me ask you: Had Gaffney made that particular cloth in 1956, if you know? A. The records don't record it as Gaffney having made that broadcloth construction in 1956.

Q. All right.

Mr. Dyer: Mr. Examiner, I could make a conclusion here as to this, but I think it might be more proper in the brief as to what this does show, unless you wish it at this time.

Trial Examiner: I would like it.

Mr. Dyer: All right. What I have done is add the constructions which Darlington sold to these customers. That would be to add 4,387,000.

Trial Examiner: Sold to these five customers.

Mr. Dyer: Actually there are four customers.

Trial Examiner: Four customers. Excuse me.

Mr. Dyer: I have added the total amount which I have mentioned, those being 4,387,999, which is in itself an [2795] addition of 930 and 69; 900, 641 and 180. I get a total of 7,107,000 yards.

Now, 7,107,000 yards was approximately during 1956 one-third of Darlington's production, was it not, Mr. Phillips?

The Witness: The records record Darlington produced 22,448,000 yards in 1956. So that conclusion would be about correct.

Mr. Dyer: All right.

Mr. Updike: That wasn't a complete year.

The Witness: That is correct. That was through the point of liquidation. Its normal full annual production would have been greater.

Mr. Dyer: Now I have then added the constructions made by these others in 1957 of this same type of cloth which they had not made in 1956. Therefore I would add the 10,550,000 the 1,500, the 855, the 29, and I have added in the difference. I believe I mentioned this one to you that on the 37½ 390. 99x44 Monarch did make 456,000 yards of that in

1956. Darlington had made 160,000 yards of it. And in 1957 Monarch increased to 530,000. This may not be completely correct. But what I have done is subtract 456 from the 530 which gives me 74, and added that into the figures previously mentioned getting a total of 13,008,000 yards, which is actually an increase of 5,901,000 yards over Darlington's production in [2796] 1956, prior to Darlington's liquidation.

Q. (By Mr. Dyer) Is it a true statement, Mr. Phillips, that most of the constructions, the majority of the constructions in cloth Darlington was running during 1956 was duplicated or being made in these other mills, Monarch, Pacolet and Gaffney?

Mr. Schoemer: In 1956?

Mr. Dyer: In 1956, yes.

The Witness: That is a generally correct statement. That is a very vague answer.

Mr. Dyer: All right.

The Witness: If I could carry it a bit further?

Mr. Dyer: Go ahead.

The Witness: The nature of all of these mills and the nature of the market was such that they all were always doing about the same thing.

* * *

[2798] Q. (By Mr. Dyer) Now to move to another topic, there were some six contracts, as I understand it, which represented approximately 7.8 of Darlington's production which it was not able to fulfill in 1956.

Trial Examiner: That is 7.8 percent?

Mr. Dyer: Yes, sir.

Q. (By Mr. Dyer) Is that approximately right, Mr. Phillips? A. That is correct.

Q. All right. And these contracts for various styles of cloth were sold, four of them to Monarch, one to Pacolet and one to Gaffney? A. That is correct.

[2799] Q. Now, on one of the contracts, the market —actually on three of the contracts, the market had advanced between the time of Darlington making the sale and the time when the contract was sold to the other mill.

First of all let me withdraw that for a moment. Let me ask first were these partial unfulfilled contracts? A. Yes.

Trial Examiner: They were partially fulfilled?

Mr. Dyer: By Darlington, yes.

In other words Darlington had run some quantities of cloth and wasn't able to finish prior to its liquidation. That balance was sold to these other mills.

The Witness: That is correct.

Mr. Schoemer: Well I assume once again—I really don't want to quibble over these things but to say that Darlington was unable to finish these contracts may not be correct. It could have stayed in business and finished them presumably.

Mr. Dyer: Well, yes.

Trial Examiner: Well in view of the liquidation.

Mr. Schoemer: Yes. that is right.

Q. (By Mr. Dyer) Now had there been advances in the market between the time Darlington had taken the contracts and the time these contracts were sold on some of these items? A. Yes, there had been.

[2800] Q. On one of the items, the 99 x 44, had the market advanced approximately a quarter of a cent? A. Yes, it had.

Q. And when the contract was sold to Monarch, did Monarch ask for and get the quarter of a cent difference? A. Yes, they did.

Q. Per yard? A. That is correct.

Q. And did the same thing happen to the 80 square, 170,000 yards of which was sold to Pacolet? Had there been an advance in the market there? A. Yes.

Q. Was that approximately a half a cent? A. Correct.

Q. And did Pacolet receive that extra half a cent from Darlington per yard? A. Yes.

Q. Now on the last one that I note here, Darlington had had a contract with I think Acme Quilting for an 80-inch 3.25 weight 60 x 46 cloth; is that right? A. 81 inch, 3.20, 60 x 46.

Q. Was it 81 or 80 inch? A. 81.

Q. And Darlington's contract had been for an 81 inch cloth? [2801] A. Yes.

Q. To a quilting company, if I am not mistaken? A. That is correct.

Q. And none of the D-M mills were making that particular cloth at that time? A. That is correct.

Q. Were you active in the sales department at that time? A. Yes, I was.

Q. And as I understand it, efforts would be made to interest outside companies in taking the balance of that contract without success? A. That is correct.

Q. And finally——

Trial Examiner: When was this that the efforts were made?

Mr. Dyer: At the liquidation of Darlington.

Trial Examiner: Thank you.

Q. (By Mr. Dyer) Finally the customer was asked if he would take a slightly different construction being made at Gaffney at that time; is that correct? A. That is correct.

Q. And the different construction was a little bit heavier cloth with—54 x 52 construction rather than 60 x 46 construction? A. That is correct.

[2802] Q. Now Gaffney did take that——

Trial Examiner: Well did the customer agree? You left us with the customer being asked.

Q. (By Mr. Dyer) The customer did agree to take that construction? A. He was persuaded to change, yes.

Q. All right. And the cloth that Gaffney was making was priced at higher than the one Darlington had been making? A. No. Gaffney was unwilling to take on the changed construction at the price that Darlington had been willing to sell at, and asked for and negotiated a compensation of two cents per yard.

Q. Was Gaffney actually making that construction at that time? A. They were making an 81 inch, 310, 54 x 52. The customer was persuaded to accept that construction. But there was a difference in price of the contract that existed at Darlington and what Gaffney had been able to sell for, so that they required a compensation of two cents a yard.

Q. In other words Gaffney was able to sell the fabric they were making at two cents a yard more than Darlington had been able to sell its construction at? A. The sales agent is in the middle of a mill who is having difficulty fulfilling a contract, and a mill who is making something near it. And

the mill making something near it would [2803] not undertake the contract even with the changed construction at the price relationship that existed. He couldn't afford to. The market had changed. They had been able to get a higher price for their construction. It was a heavier piece of goods.

Q. (By Mr. Dyer) Well ordinarily there would be a higher price for the construction Gaffney was making as against the construction Darlington was making because it was a heavier piece of goods, is that right? A. Yes.

Q. All right. So there was a 2 cents differential which Darlington paid for the customer receiving those goods from Gaffney; is that right? A. Yes.

Q. Now, following 1957 Gaffney did make a cloth of the same weight with two picks more, is that right?

Trial Examiner: When you say "same weight", you mean same as what? Same as Darlington's or Gaffney's or heavier?

Mr. Dyer: Same as Darlington's, the 3.20 weight.

The Witness: Yes.

Q. (By Mr. Dyer) And that was made for this same customer? A. Yes, that is right, it was.

* * *

[2808] (By Mr. Dyer) Mr. Phillips, are you familiar with the [2809] chart on spindle activities? A. Yes, I am familiar with it, although I didn't prepare it. The data for its preparation is in the office of Deering, Milliken and Company, Inc., in New York City.

Q. Can you tell us besides the drop of the spindles, as, far as Darlington's liquidation is concerned, were there any

other dispositions—let me rephrase it. Were there any other spindles taken out of activity at any of the other Deering, Milliken mills?

Mr. Schoemer: In 1956?

Mr. Dyer: In 1956 or in 1957.

The Witness: None other than those being replaced or scrapped.

Q. (By Mr. Dyer) Do you know of any? Let's put it that way: A. I know of none.

Q. Now I think your chart indicates that there was a drop in spindle activity among the Deering, Milliken mills from 1956 to 1957; is that correct? A. That is correct.

Trial Examiner: I don't quite understand. I thought the witness had told us that there was no—that no spindles were taken out of—what is the rest of that phrase?

Mr. Dyer: Of the other Deering, Milliken mills. I was referring to mills other than Darlington.

[2810] Trial Examiner: Yes. And no spindles were taken out of—what is the phrase I want?

Mr. Dyer: Out of production.

Trial Examiner: Out of production. Thank you.

Q. (By Mr. Dyer) Now, the 1956 column would represent all the other Deering, Milliken Mills, including Darlington's capacity for the three quarters of a year in 1956. Is that right, Mr. Phillips? A. Yes, that is correct.

Q. And the 1957 column would indicate the spindle activity in all the other Deering, Milliken Mills, excluding Darlington, and whatever, if any, spindles were taken out

of activity at the other mills? A. That is correct. One column shows the total industry, and the other shows the total of mills represented by Milliken.

Q. Well, I haven't come to the industry column yet. Now the industry column for 1957 shows a decline over 1956 as well, is that right? A. That is correct.

Q. Now, the decline in capacity, according to some calculations made by Mr. Updike here, using a ruler for a scale—

Mr. Updike: It isn't a measurement of capacity, it is a measurement of spindle hours in use.

Mr. Dyer: That is of activity or capacity—not capacity; or activity.

[2811] Mr. Updike: Activity. All right. I will buy that.

Q. (By Mr. Dyer) The measurement of activity, made by Mr. Updike here—and I think you saw that—is not directly attributable to percentages. But the spindle activity drop in the Deering, Milliken mills as a whole was some 12 units from 1957 to 1956; is that right? A. May I see the figures?

(Document shown to the witness)

The Witness: That is correct.

* * *

[2816] *Cross-Examination*

Q. (By Mr. Schoemer)

* * *

[2817] Q. (By Mr. Schoemer) Would you please briefly describe to us the records that you actually examined

in the course of the preparation of this report and charts? A. I examined two phases of records, the first relating to the production of different fabrics at the mills, and different yarns at the mills, at each mill by visiting the mill and developing the exact data from their records. I then developed the balance of the data relating to sales in the sales office, each of those records being kept at the separate location.

Q. How much time was spent in this work, Mr. Phillips? A. An aggregate of some 300 to 350 manhours were spent in assembling the report.

Q. How much of that is your time? A. About 150.

* * *

[2818] Q. Mr. Phillips in 1956 were you employed as—or were you employed as a salesman in the print cloth department of Deering, Milliken and Company? A. Yes. I was Merchandising the print cloth made at Pacolet Manufacturing Company, and I was also active in general sales of print cloth.

Q. At all plants of the Pacolet Manufacturing Company; sir? A. Yes. My sales activity encompassed both print cloths and drills, twills and sheeting.

Q. During that same year, did you come in contact at all with the sales of the products of Darlington Manufacturing Company? A. Yes.

A number of the accounts that I sold bought constructions we were making at Monarch—or rather making at Darlington.

* * *

[2825] Trial Examiner: Back on the record.

Computation has been made of the percentage drop in spindle activity from 1956 to 1957. And all

Deering, Milliken Mills, so-called, the percentage drop using 1956 as a base is 7 percent.

At all mills in the industry, using the same base, the percentage drop is 5.1 percent.

* * *

[2829] Q. (By Mr. Schoemer) Can you approximate for us, Mr. Phillips, the percentage of Darlington's 1955 production which those same four constructions comprised? A. Approximately 50 percent.

Q. Your answer is approximately 50 percent? A. Yes.

Q. So that the four particular styles about which Mr. Dyer asked you in 1956 amounted to 72 percent of Darlington's production, and in 1955 amounted to 50 percent of Darlington's [2830] production, is that right? A. That is approximately correct, yes.

Q. Is such a fluctuation a characteristic of the industry? A. Yes. And was more truly characteristic of Darlington. Their fluctuation from year to year in fabric types was very substantial. It was not so true of the other mills we represent.

Q. Well, for example, then, so far as Monarch Mills is concerned, to cite an example, you wouldn't expect to find as wide a fluctuation? A. No.

Q. Or in the case of Pacolet? A. No, you would expect to find virtually none.

Q. Or Gaffney? A. Virtually none.

* * *

[2832] Q. Now, I would like to turn your attention to the subject on which Mr. Dyer asked you some questions, which is the so-called unfilled contracts of Darlington.

Now, I think the point is clear, is it not, that on all of these contracts Darlington—I will withdraw the question and start it another way.

So far as the 99 x 44 poplin is concerned, that was the item on which Monarch Mills took over the performance of Darlington's contract, is that so? A. Yes.

Q. And that is also the item on which orders were accepted for Monarch Mills after September 1, 1958, but before Darlington actually ceased production. Is that also true? A. Yes, that is correct.

Q. No, you have already testified, I think that this [2833] particular style of poplin is a staple fabric? A. Yes, it is.

Q. And as such I would assume that constant requests are being made upon Deering, Milliken as the sales agent for quotations of prices and for orders on fabrics of this kind, is that correct? A. Yes, that is correct.

Q. Now, do you know it to be the fact, Mr. Phillips, that such prices were being asked for and such orders were being tendered to Deering, Milliken in September of 1956? A. Yes, that is a fact.

Q. Do you know which customer was involved? A. A number of customers were involved, principal among them were Lowenstein and American Bleach Goods.

Q. Was Lowenstein a large customer in terms of total production of cloth from Deering, Milliken? A. Probably our single largest account.

Q. And is American Bleach Goods also a large customer? A. They are.

Q. Now, at that time, I would assume from what your testimony was before that had it not been for the uncertainty that was existing at Darlington as to its future, these particular orders would have been offered to Mr. Oeland at Darlington, is that correct? A. They would have been, yes.

[2834] Q. And that in view of those uncertainties, the offer was made to another mill, Monarch Mills; is that also correct? A. Yes, sir. With some pressure from the customer.

Q. What do you mean by "pressure from the customer"? A. They want to keep as great a number of sources for a staple fabric to keep the price negotiations in their favor, so that in the particular instance involved Lowenstein was anxious for us to keep offering him a poplin and kept pressure on us to work out a situation where we would sell him poplins.

Q. You are saying Lowenstein could have bought that poplin somewhere else? A. Yes. There are at least four to seven other mills from whom they were buying it at that time. We were one of several suppliers.

Q. One of several regular suppliers to Lowenstein? A. That is correct.

Q. When you say "we", you mean Deering, Milliken? A. That is correct.

Q. Now, during this same period of time, was Deering, Milliken in a position to offer the 109 x 58 broadcloth? A. No. At the time that Darlington ceased production, we had a desire to sell but no mill willing to produce.

Q. I think the fact will generally be conceded to be that Darlington ceased production some time in November of 1956. Was that the date you had in mind when you gave that answer? [2835] A. Yes.

Q. Had Darlington been producing the 109 x 58 broadcloth between, let us say, September 15, 1956 and November 1956? A. Yes. They were finishing up their contracts.

* * *

[2839] Q. (By Mr. Schoemer) Mr. Phillips you will recall during yesterday's testimony you were asked to obtain

certain information relating to quantities of fabrics or poundage of yarns and also relating to the number of spindles at the various mills. Taking up the first of those categories, have you since yesterday's session compiled figures relating to the poundage of yarns produced? A. Yes. I have compiled the pounds of yarns produced at the mills represented by Deering, Milliken.

Q. Which mills, Mr. Phillips? A. The mills involved in the sale of carded cotton fabrics.

Q. For what years do you then have those figures? A. I have them for 1955, 1956 and 1957.

Q. Now, will you first state the figures as they have been compiled for all of these mills? And I assume that these figures will include Darlington? A. Yes, they do.

Q. For the year 1955 and 1956? [2840] A. In 1955, the total production was 56,387,000 pounds. In 1956 the total production was 59,701,000 pounds.

Q. And you, if you have done the arithmetic, what is the difference for the two years? A. The difference is a total of 3,323,000 pounds.

Q. And that 3,323,000 pounds represents the increased production of carded yarns at all the carded mills, including Darlington in the two years in question; is that so? A. That is correct.

Q. And which are those mills again? Would you name them, please? A. The mills are Pacolet Manufacturing Company, Monarch Mills, Gaffney Manufacturing Company, and Darlington Manufacturing Company.

Q. And those are the only so-called carded mills that sell through Deering, Milliken, is that correct? A. That is correct.

Q. Now, the term "carded mills" is in the sense in which we are using it synonomous with print cloth mills; is that correct? A. That is correct.

Q. Now what is the figure for 1957? A. In 1957 the total production was 58,466,000 pounds.

Q. And how much is the amount of decrease there? A. The decrease is 1,235,000 pounds.

[2941] Trial Examiner: That is over 1956?

Mr. Schoemer: Yes.

Trial Examiner: That was what?

Mr. Schoemer: What is the difference?

The Witness: 1,235,000.

Q. (By Mr. Schoemer) Now, have you obtained those same figures, Mr. Phillips, for the same group of mills other than Darlington for the years in question? A. Yes, I have.

Q. And what are those figures—

Trial Examiner: Are these totals for the three?

Mr. Schoemer: These are totals for the three years for the three other corporations other than Darlington.

The Witness: The total in 1955 for the mills represented less Darlington was 48,655,000 yards.

Mr. Schoemer: You mean pounds?

The Witness: Pounds, excuse me.

Q. (By Mr. Schoemer) And for 1956? A. 1956 the total was 53,822,000 pounds.

Q. An increase of how much? A. 5,167,000 pounds.

Q. And for 1957? A. Total production was 58,486,000.

Trial Examiner: Naturally it was the same.

Mr. Schoemer: Yes.

[2842] Q. (By Mr. Schoemer) And the amount of increase there is how much? A. 4,644,000 pounds.

Q. So that for the years 1956 and 1957, there is roughly the same increase in total poundage at those mills over the previous years, is that correct? A. Yes, just a little shy.

Q. In other words, Mr. Phillips, over the span of years that we have been talking about here, there is a relatively constant rate of production increase at the mills other than Darlington in total yarn poundage? A. That is correct.

Q. Now, if you know, what was the principal cause for that particular increase in the years in question? A. The increases that are recorded here were primarily the result of modernization programs, higher-speed equipment in the mills involved.

Q. Now, Mr. Phillips, let's turn to the subject of number of spindles which I think is another item on which Mr. Dyer asked you to get some evidence.

Can you tell us the number of cotton spindles at the mills selling through Deering, Milliken, including Darlington, for each of the years in question? That is, 1955, 1956 and 1957? A. Yes. Those totals are as follows: In 1955 the total [2843] spindle figure is 571,134. In 1956 the figure is 609,072. And in 1957 the total figure is 588,910.

Q. Now do these figures apply to the same group of mills that we used to give the poundage figures? A. No. they include the Hartsville, Drayton, and Judson Mills, which we also represent.

Q. But include cotton spindles only at those mills, is that correct? A. The figure is related to production of cotton yarns only.

Q. Now, do you have any supplemental figures to give with respect to the amount of spindle activity which was

discussed yesterday trying generally to measure the rate of increase or decrease in the Chart that you were examining at that time? Do you now have the exact figures? A. Yes, I do.

Q. Will you give those, please? A. The chart we refer to was shown yesterday and showed the percent of activity of mills represented by Milliken to the total activity in the industry. The reading of Milliken percent activity in 1956—that is, the mills represented by Milliken—was 95.3 percent.

* * * *

[2845] Q. (By Mr. Schoemer) Will you give us the like figure for 1957, please, Mr. Phillips? A. 88.6 percent.

Q. Now Mr. Phillips, when we recessed yesterday afternoon I believe we were talking about the history of the 109 x 58 broadcloth. And you were describing the arrangements that had been made with Stein-Tex for the cancellation of the contract for Darlington to produce yardage of that construction. Do you recall that? A. Yes, sir.

Q. As I recall it, the testimony was that the contract was cancelled with the customer or rather the contracts, plural, were cancelled with the customer; that no allowance was made to the customer on one contract, and that an allowance was made with the other contract; is that correct? A. That is correct.

Q. Just to make sure we have the point clear, would you once again give the figures on that? A. The total unfilled yardage on contracts was 1,100,000 yards. [2846] 900,000 yards was cancelled with a one-half cent per yard allowance to the customer. 200,000 yards were cancelled with no allowance.

Q. So that in the case of the contracts with this particular customer for the 109x58, unlike the case involving the 99 x 44 poplin, the contract was not sold in your phase to any other mill; is that correct? A. That is correct.

Q. Now how long a period of time did you say elapsed before another mill began producing the same construction? A. Approximately six months.

Q. Which mill was that? A. It was the Monarch Mills.

Q. Now, during that six months interim, was Deering, Milliken able to offer any 109 x 58 broadcloth? A. No, we were not.

Q. Because none of it was being manufactured by any of the mills; is that correct? A. That is correct.

Q. During that same period of time, if you know, was the customer, Stein-Tex, purchasing amounts of that particular style? A. Yes, he was.

Q. Did you know from whom? A. I know from personal friendship with the salesman [2847] who handles the account.

Q. Well I take it in any event that the source of his supply was one or more mills other than Deering, Milliken? A. Yes. Stein-Tex was buying at least 20 million yards a year or greater of the 109 x 58 broadcloth and was buying then from at least two or more other mills. We were one supplier. I believe that the Inman Mills of Canton and Turner-Halsey, the Arcade Mills, were two of his suppliers.

* * *

[2848] The Witness: Yes. The market volume on 109 by 58 broadcloth was increasing substantially, as was the volume of activity of Stein-Tex as a company. He has been growing very rapidly.

So that in moving into 1957, the sales agent was very anxious to continue to get business from this

account, who was a large purchaser from other mills represented by Deering, Milliken in the extent of approximately 4 million yards in 1956 with a corresponding jump to around 10 million in 1957. So that we were finally able to get a firm bid from Stein-Tex [2849] which we then used as a means of persuasion to get the Monarch plant to agree to run this fabric construction.

* * *

[2860] Q. (By Mr. Schoemer) And the total yardage produced by Darlington in 1956 was how much? A. 21,707,000 yards.

Q. So that of your 91.8 figure, representing contracts filled or settled by Darlington with the customer, approximately 4 percent represents the contracts settled with the customer, is that correct? A. That is correct.

Q. Now, as to the contracts that were transferred to—transferred or sold to other mills, I believe that we have already discussed the 99x44 poplin sold to Monarch. Now, is it the fact that certain contracts within the range of 80 square styles were also sold to Monarch? A. Yes, that is correct. There were two constructions in this category.

Q. Now, how much yardage was involved there? A. A total of 330,000 yards. And those two constructions are the 39-inch, 4.17, 80x76—I am sorry, I made an error in the figure I gave you.

Q. Yes. Will you correct that?

Trial Examiner: Are these other constructions sold by Monarch?

Mr. Schoemer: Sold by Darlington for which outstanding contracts were in force with Darlington in the fall of 1956 and in which case the contracts were completed by Monarch.

[2861] In other words, Darlington sold these particular contracts to Monarch. And the styles that were concerned were in the 80-square range.

Q. (By Mr. Schoemer) Would you identify the styles again please, Mr. Phillips? A. The first part of my answer was incorrect as it now stands on the record.

The correct answer is: There are two constructions in this category: The 40 inch, 4.16, 80 x 72, a contract amount of 180,000 yards, and the 41 inch, 4.12, 78 x 76, these two contracts total 330,000 yards and were sold by Darlington to Monarch Mills.

Q. All right. Did I correctly use the term that these styles, Mr. Phillips, are in the range of 80 square print cloths? A. Yes, sir, that is correct. They are what we class as 80 square fabrics.

Q. Can you tell us what Monarch's production in 1956 and 1957 of the same range of print cloths was? A. In 1956 Monarch's production of 80 square fabrics—80 square-type fabrics—was 15,236,000 yards. And in 1957, their production was 21 million—excuse me, I am giving the wrong figures.

Monarch's production is 1956 was 11,862,000 yards. And in 1957 was 7,179,000 yards.

[2862] Q. And the Darlington Contracts that it took over and completed amounted in all to 330,000 yards, is that correct? A. That is correct.

* * *

[2866] Q. (By Mr. Schoemer) Now, Mr. Phillips, have you caused an investigation to be made of the records of Deering, Milliken and the various mills with respect to purchases by those firms which were the largest customers, so far as Darlington's production was concerned? A. Yes, I have.

Q. And have you in particular examined the records pertaining [2867] to purchases by Darlington's ten largest customers in 1956? A. Yes, I have.

Q. How much of Darlington's——

Trial Examiner: Excuse me. When you say the "largest customers of Darlington's production", you mean Darlington's largest customers?

Mr. Schoemer: Yes.

Q. (By Mr. Schoemer) How much of Darlington's production did those ten customers purchase in 1956? A. 55 percent.

Q. How many other customers were there? A. There were 58 other customers who accounted for the balance of the production.

Q. Which I take to be 45 percent? A. That is correct.

Q. Thank you. Now, have you examined into the purchases made by those customers from Deering, Milliken for periods of time subsequent to the closing of the Darlington Manufacturing Company Plant? A. Yes, I have.

Q. Now, will you please tell us how many of those ten customers increased in 1957 their total purchases from Deering, Milliken as against 1956? A. Only three increased.

* * *

[2871] Q. (By Mr. Schoemer) Mr. Phillips, in the course of the examination of the records to which you have referred, have you accumulated information showing the purchases made by these ten largest Darlington 1958 customers from other carded cotton mills represented by Deering, Milliken? A. Yes, I have.

Q. Now, do the figures which you have assembled represent the sales through Deering, Milliken of the production of these other mills in fabrics which are generally speaking competitive in the market with the fabrics that were manufactured by Darlington in 1956 and earlier years? A. Yes, that is correct.

* * *

[2884] The Witness: Yes. You asked what the total was of those firms. And in 1956 their total purchases from mills we represented was 53,196,000 yards.

Mr. Schoemer: All right.

Q. (By Mr. Schoemer) Now, can you give us the similar figure for 1957, having in mind that that figure, unlike the 1956 figure, will not include any production for Darlington? A. That figure is 44,403,000 yards.

Q. Now I believe you have testified, Mr. Phillips, that seven of the companies that you have identified as Darlington's principal ten customers decreased their purchases from Deering, Milliken of this type—of these types of fabrics in 1957, is that correct? A. That is correct.

Q. And were they the first seven listed on the list of customers that you just gave? A. Yes, they were.

Q. And are we to conclude from that that the other three customers increased their purchases from Deering, Milliken? A. That is correct.

Q. Now will you indicate first of all the amount of decrease for the first seven customers collectively, 1957 as against 1956? A. That decrease was 17,360,000 yards.

[2885] Q. And perhaps you had better also state the total purchases for two years by that group of seven? A. The total purchases in 1956 were—I believe I have stated

a figure in thousands that should be correctly stated in millions.

That decrease was 17,360,000 yards.

Mr. Schoemer: You said that.

The Witness: The total then in 1956 was 34,008,000 yards. And in 1957, 16,648,000 yards.

Q. (By Mr. Schoemer) Now, the 1956 figure that you have just given—to make the point doubly sure—included Darlington; is that correct? A. That is correct.

Q. And we have estimated that the purchases—well, no we have not, excuse me. I withdraw that.

Now, as to the remaining three customers on your list of ten, will you please indicate there the 1956 and 1957 purchases? A. The 1956 purchases were 19,188,000 yards. And in 1957, 27,755,000 yards.

Q. Stein-Tex, of which we have heard a good deal this morning is on that list of three, is it not? A. That is correct.

Q. And approximately three-quarters of the net increase for those three firms is to be ascribed to the increased 1957 [2886] purchases by Stein-Tex of the 109 x 58 broadcloth, is that correct? A. That is correct.

* * *

[2890] Now, Mr. Phillips, one final question: To your knowledge at the time Darlington ceased taking orders for print cloths in the fall of 1956—or I guess in September of 1956—was that fact generally known in the trade? A. Yes. The news was published in trade papers.

Q. And is it a fact that concurrently with publication of that news, and as word got around in the trade, there was general competitive activity in the direction of those firms

who had been Darlington's largest customers? A. Yes. The competitors who knew they were up against Deering, Milliken selling a Darlington fabric naturally went after a bigger share of that business.

Q. Plus, in fact, Deering, Milliken itself may have done it another time when some other cotton textile mill has gone out of business? A. That is correct.

Q. In other words it is the general pattern of sales activity in the business that when any mill ceases operations everybody moves in and tries to get hold of its business, is that correct? A. Absolutely.

Q. And that happened here? A. Yes.

Q. Now, have you any basis on which to estimate the extent to which that competitive activity was successful in the case [2891] of Darlington? A. It is difficult to measure the great number of other mills who were competing in this area. So my answer to your question is I don't know how to measure it. It was going on.

Q. That you do know? A. Yes.

Q. But in fact there is no way to determine precisely what success that competitive activity had, is that so? A. That is correct.

Q. However, you are—or you do have some information as to the success of the competitive activity with respect to the 109 x 58 broadcloth, do you not? A. Yes.

Q. That being the instance of Stein-Tex that you have testified to this morning? A. That is right.

Q. And do you know it to be the fact that—well let me put it this way first of all: It was known in the trade that Darlington was a producer of this particular type of cloth, was it not? A. Yes, it was.

Q. And do you know it to be the fact that as soon as word of Darlington's possible dissolution hit the market, so

to speak, that the other mills producing the same or competing kinds of cloth immediately began to try to sell their products [2892] to those customers which had bought Darlington's production?

Mr. Dyer: May I have an objection to that question, sir, I don't see how this witness can say that he knows what other firms were doing in contacting the customers.

Mr. Schoemer: Well I asked him if he did know. I am sure if he doesn't, he will say so.

Trial Examiner: Well we may want to explore the basis. To say he knew is a conclusion. You may want to explore the basis of his knowledge. I will let him answer the general question.

Q. (By Mr. Schoemer) Do you recall the question, Mr. Phillips? A. Yes. The question was did I know what other mills were doing at the time the news of Darlington's possible dissolution was announced in the trade?

Yes, in the sense that the customers like Stein-Tex and others were aware of the news, and they are being called on by the salesmen of other sales agents and mills and it was a matter of discussion. I mean everybody in the market knew. You couldn't help but know. And we were well aware of the fact that offerings were being made to our customers, and our customers wanted answers from us as to what was going to happen so they could react to these offerings being made by the competition.

It was a matter of general knowledge of every one in the [2893] normal course of business.

* * *

[2894] The Witness: Yes. Intensified their pressure. You see the possibility of gaining additional business, so you put on all the extra pressure you can. More calls, promises of potentially lower prices, every possible selling pressure is used.

Mr. Dyer: And were the customers of Darlington telling you that this was happening from the others?

The Witness: Yes. Let me explain.

A good example is the 109s. That amount of broadcloth wasn't just picked up by another mill. It required an effort for the mill to get it and a definite plan on the competitive mill's part of how they were going to handle the business. So that they had to develop a program on their own of picking up an additional yardage from zero to "x" million that suddenly existed. The competition in the trade knew about what Darlington was making and they recognized that as a new potential.

That meant that in their own mills they would have to put something else out to take this in. The profit opportunity existed in these 109s. They moved in to get it.

* * *

[2897] Q. (By Mr. Schoemer) One final point, Mr. Phillips: What was the total yardage in the 12 contracts sold by Darlington to the other mills? A. The total yardage was 1,830,000 yards.

Q. And what at that time was the approximately weekly production of those mills to which these contracts were sold? A. About 6 million yards a week.

Mr. Schoemer: No further questions.

Trial Examiner: Excuse me. The total weekly production at that time of what?

Mr. Schoemer: Monarch, Gaffney and Pacolet.

Trial Examiner: Of those mills only?

Mr. Schoemer: Yes, sir.

* * *

[2898] Mr. Schoemer: Mr. Examiner, this morning we produced and gave to Mr. Janes a copy of the employees' booklet at Judson Mills. We have now received the one which is issued to employees at Drayton Mills. And I hand the copy to Mr. Janes and Mr. Dyer.

William R. Phillips resumed the witness stand and testified further as follows:

Redirect Examination

Q. (By Mr. Dyer)

* * *

[2907] Q. Mr. Phillips, would it be a fair statement that as far as filling numbers go, Darlington's range of filling numbers was extremely limited in comparison with the filling numbers run by these other three companies? A. Yes. It was a much smaller mill. That question and answer, however, didn't strike the point.

* * *

Q. (By Mr. Dyer) You testified this morning that of the [2908] eight customers whose contracts were sold, five of them decreased in total contracts with Deering, Milliken; is that right? A. Yes.

Q. I think one of them you mentioned was Acme; is that right? A. Yes.

Trial Examiner: Well I am wondering is it five or six? Or am I considering the wrong——

Mr. Dyer: Excuse me. You are right. It is six decreased and two increased.

Q. (By Mr. Dyer) And of the six mentioned, one was Acme? A. Yes.

Q. Now, Acme in 1956 had a contract with Darlington for some 500,000 yards—rather for some 640,000 yards, of which 140,000 was transferred to Gaffney. And it also had a contract for 300,000 yards with Monarch; is that right? A. That is correct.

Q. Now, Monarch went down to only 50,000 yards the following year, 1957, with Acme; is that right? A. No that is not correct. Well, yes that is correct, I am sorry. It dropped from 300,000 to 50,000.

Q. All right.

And Gaffney, which picked up only—it is starting—the starting point was 140,000 with Acme. That is, the balance [2909] of the Darlington contract. And the following year went up to 690,000 yards; is that correct? A. The total of business was that figure, yes.

Q. That was all on double width goods? A. Yes.

Q. Whereas the Monarch contract was on single width goods? A. That is correct.

Q. So that when you say that the volume decreased. It decreased because Monarch got 250,000 yards less contracts with Acme on a cloth not made at Darlington at that time? A. That is correct.

* * *

[2910] Q. (By Mr. Dyer) Mr. Phillips, in the figures you gave this morning you gave the total number of spindles and also the pounds of yarn produced. Now, as I under-

stand it, those have very direct relations in that the spindles along with the spindle activity would necessarily mean the pounds of yarn produced. A. Well, not exactly. The pounds of yarn we gave you this [2911] morning were the exact production of the mills in question here. The spindle activity reduced to a percent here—you can't work the percent against the pounds I gave you and be working with two likes.

Q. Well, the number of spindles has a direct bearing on the number of pounds of yarn produced; is that right? A. Yes.

Q. Where you have got "x" number of spindles, they normally can produce "x" pounds of yarn. A. Yes.

Q. Now, I understand from the conversation with you that this would not necessarily mean that consequently "x" yardage of cloth would be produced, because of the variance in the styles of cloth and in the weights of cloth; is that right? A. That is right.

* * *

[2913] Q. Do you remember what the broad general trend was on print cloths in 1956 and 1957? A. I would say the trend was to lighter weight print cloth.

Q. An increase in the number sold, or what? A. I don't think that the total yardage in the market went up any substantial amount.

Q. That is in 1957 over 1956? A. My recollection is that it was a little less.

Q. In other words, then, broadcloths went up a bit, and print cloths came down a bit? A. Yes.

* * *

Q. And your mills would follow the market pattern too, wouldn't they? A. Would sell what the market used, yes.

* * *

[2914] ROGER MILLIKEN called as a witness, having been first duly sworn, was examined and testified as follows:

Trial Examiner: What is your name?

The Witness: Roger Milliken.

Trial Examiner: Where do you live?

The Witness: Spartanburg, South Carolina.

Direct Examination

Q. (By Mr. Dyer) Mr. Milliken, you were the president of Darlington Manufacturing Company at the time of its liquidation, is that right? A. Yes, sir.

Q. And at that time your office was located in Spartanburg, South Carolina? A. Yes, sir.

Q. And that is the office from which you operate, both as President of Darlington and in your other capacities as [2915] President of other mills, and as President of Deering, Milliken; is that right? A. That is my main office, yes.

Mr. Dyer: Mark this General Counsel's N-1.

(The document above-referred to was marked General Counsel's Exhibit N-1 for identification)

Mr. Dyer: Mr. Examiner I now offer what has been marked General Counsel's No. N-1, being a memorandum from Roger Milliken to various mill treasurers, and to various people at the service corporation, and I believe at the service corporation, dated November 14, 1956.

Trial Examiner: Any objection?

Mr. Updike: No objection.

Trial Examiner: General Counsel's N-1 is received.

(The document above-referred to, heretofore marked General Counsel's Exhibit N-1 for identification was received in evidence)

Q. (By Mr. Dyer) This memorandum was prepared by you, Mr. Milliken? A. Yes, sir.

Q. Now, attached to it, according to the memorandum, is an article from November 8 issue of America's Textile Reporter. "I am sending it to you in case you have not had an opportunity to see it."

There is also attached a piece of paper which is a [2916] quote, apparently, from the South Carolina State Chamber of Commerce Newsletter. Was that also included in this memorandum to the people named? A. I can't tell that, Mr. Dyer, from this covering letter.

Q. This is as it appeared in one of the files, I think, at Darlington? A. Well then it probably was.

Q. All right. Now, in addition to the article from America's Textile Reporter, there is also on the right-hand side of the last page an editorial. This you also selected to be sent along with the article; is that correct? A. Yes, sir.

Trial Examiner: Is that clear on the copy that you have?

Mr. Dyer: I am afraid sir, it isn't much clearer than the copy that you have. I think you can read at the top "Editorial."

Trial Examiner: I can't. That is the reason I asked. I see the letter "e" in the upper right-hand corner. That is the page, isn't it?

Mr. Dyer: Yes, sir.
Trial Examiner: Is that word there "editorial"?
Mr. Dyer: I believe it is.
Trial Examiner: All right.
You may proceed.

(Discussion off the record)

* * *

[2917] Q. (By Mr. Dyer) Now, as to the editorial itself, Mr. Milliken, you read that, and I think you said you had that reproduced along with this for sending to these various mills and DMSC? A. Yes. I think it was in the same issue as the article itself.

Trial Examiner: Are we speaking of the——
Mr. Dyer: The two page article on the back.
Trial Examiner: I realize that. But this editorial was part of the Chamber of Commerce thing.
The Witness: No. It was in this same issue of the American Textile Reporter as the article headed: "The Darlington Situation Becomes Object Lesson to all Concerned."

Q. (By Mr. Dyer) As far as the article is concerned, in your memorandum you state: "It is apparent from this article that this magazine made a real investigation in Darlington. And for that reason I think the article is interesting. While this article shows that the Union leaders definitely misled the people, it also points out that the mill was negligent in its public relations.

"I hope that you will read this second part of the article carefully and review in your mind the steps that you are taking to bring about an understanding of your mill and its problems in your community. The Unions are going to be

making a tremendous drive all through this area. And there are few [2918] things that are more important to us than making sure that the leaders in your community understand and are sympathetic to what you are trying to do."

I take it from that that after reading this article that it was your wish that the various treasurers read this article and be guided by it? A. And take advantage of the recommendation that the person who wrote this article felt was a desirable thing for all textile mills to do when they were faced with a problem of making work assignment changes in order to be competitive, namely, to be sure that the people in the community, the leaders, realized the competitive nature of the textile business and the necessity in order to survive of lowering costs, in that when they did put in new machinery in order to lower the costs they would know why the mill was doing this and that it was something that others in the textile industry were also doing, and that in order to keep abreast of this progress in increasing the productivity, it had to be done.

Q. Turning to the editorial for a minute, did you subscribe to the comments made in the editorial?

Mr. Updike: Well do you want to take them one by one or do you want to take all of them? It is a pretty large article.

Q. (By Mr. Dyer) Well it is a one column article.

[2919] Mr. Updike: The editorial. You mean the righthand column?

Mr. Dyer: Yes, on the last page.

Mr. Updike: The last page of the photostat?

Mr. Dyer: Yes.

The Witness: That has a lot of different statements in here, Mr. Dyer.

Q. (By Mr. Dyer) Well there are a number of different statements in there. Are there a number that you agree with? A. May I read them one by one?

Q. Yes. A. Which one do you want me to start with?

Q. Why don't you read the whole article if you can, Mr. Milliken, and then we will see.

Trial Examiner: Are we referring now to the editorial?

Mr. Dyer: The editorial, yes.

Mr. Updike: Right-hand column, last page of the photostat.

The Witness: I can't read the top of my copy.

Trial Examiner: "It seems that the people of Darlington, South Carolina have suddenly come face to face with the—" something— "—labor management problem."

The Witness: What kind of labor management problem?

Mr. Updike: I think it is "basic".

Mr. Dyer: The next line is "Who is going to manage." [2920] "We concede that stockholders of a corporation such as the now liquidated Darlington Manufacturing Company being the proprietors of the company select the management of the mill and expect that the management shall——"

Trial Examiner: I am afraid we will have to wait.

Mr. Dyer: I think so too.

Trial Examiner: I think we should note on the record in connection with this reference to waiting that the original is not here but available. And we

expect it in a few minutes. We will take a 10-minute recess.

(Whereupon, a recess was taken)

Trial Examiner: I think it would be a good idea since we have read about half of this portion which isn't clear to continue on for the balance of that and have it in the record.

Mr. Dyer: All right.

Trial Examiner: Let's start with "Darlington Manufacturing Company."

Mr. Dyer: "—being the proprietors of the company select the management of the mill and expect that this management shall allocate the job, delegate the wages and sell goods at a profit. We further contend that the community has a certain responsibility to see that such a cooperative civic climate will exist as to assure the proprietors of the company a fair competitive chance. If the people of Darlington knew anything of the Deering. Milliken record they would know that that [2921] management does not intend——"

Trial Examiner: I think that is enough.

Mr. Updike: May we finish out the sentence?

Trial Examiner: Sure.

Mr. Dyer: "—intend an unprofitable division, nor has it intended to share the prerogatives of management with labor union leaders."

Q. (By Mr. Dyer) Now, the paragraph goes on, Mr. Milliken; and the writer describes what has happened at other locations, and states what he knew would happen at Darlington.

Now, the question that was before you was: Did you subscribe to the statements of this editorial writer? A. Not all of them, no, sir.

Q. But you did pass the full editorial around without making any comments as to the editorial, did you not? A. I did.

Q. Now, getting back to this for a moment, you stated that you did subscribe to some of the statements. Can you point at those to which you did not subscribe?

Let's put it the other way: What did you subscribe to in this editorial comment? A. Well, I subscribed to the fact that "the stockholders of the Darlington Manufacturing Company, being the proprietors of the company, select the management and expect that this management shall allocate the job."

[2922] I don't know what he means by "delegate the wages."

So, if you will construe that for me?

Q. I cannot construe it. You are the one who adopted it. A. Well, I don't know what he means by that, except the responsibility——

Q. Of setting up wages. Do you imagine that is what he meant? A. I would imagine so. And I would agree with that. And he says "sell goods at a profit."

He goes on to say "We further contend that the community has such a responsibility to see that such a cooperative civic climate will exist to assure the proprietors of the company a fair competitive chance."

I did not believe that the community has such a responsibility. I believe it would be very desirable if the community did have such a feeling. And it was the purpose of this letter, as I have stated before, with its enclosures, to urge upon the treasurers of the mills with which I was con-

nected that they do their best to see that such an understanding by the community take place.

"If the people of Darlington knew anything of the Deering, Milliken record, they would know that that management does not intend an unprofitable division"—that doesn't make English—"nor has it intended to share the prerogatives of management with labor union leaders."

[2923] I don't know what that means.

Q. Which part of it do you not understand?

Mr. Updike: Well it is in two parts. He said he didn't understand either one.

Q. (By Mr. Dyer) That is what I am getting at. Did you mean you did not understand either one of them or both of them? A. I don't know how the people of Darlington could know anything about Deering, Milliken and Company, Inc., nor do I know how they could be privy to knowledge about the financial affairs of the mills for which Deering, Milliken and Company was the selling agent.

So I can not subscribe to that.

Q. He states: "If the people knew—". He does not state "the people did know" or "should know". A. He said, "If the people knew anything of the Deering, Milliken Company, they would know."

I don't know how they could have known it. I don't think you can assume the conclusion.

"Nor has it intended—" —I presume that means Deering, Milliken— "—to share the prerogatives of management with labor union leaders."

Deering, Milliken and Company has never had a contract with labor union leaders.

Q. I don't think he refers to Deering, Milliken and Company.

[2924] He just refers to Deering, Milliken presumably meaning the various mills. A. Well then, I coudn't agree with that because that was not the fact.

Q. What wasn't a fact? A. That Deering, Milliken and the mills were one and the same thing. Which is what I thought you just said.

Q. I say apparently he took Deering, Milliken as meaning the mills. As you know—you have been here most of this time—there have been repeated references both in correspondence and otherwise to the Deering, Milliken mills? A. That is correct.

Q. And I would presume what was meant there would be the Deering, Milliken mills. Now, in that light, what is your assessment of that?

Mr. Updike: Well he is asking him to speculate in part at least on what the man may have intended by this reference.

If you want to ask him a direct question paraphrasing the editorial I am sure he will be glad to give you his best answer.

Mr. Dyer: If I didn't do that, I intended to do that.

Q. (By Mr. Dyer) Considering the phrase as meaning "Deering, Milliken Mills", what is your answer? A. Well, I don't see how they could draw such a conclusion, [2925] because it is a matter of fact that Lockwood Manufacturing Company in Maine, which isn't mentioned here, was a company that sold through Deering, Milliken for a great many years. For a period of fifteen years it was a unionized operation. And, therefore, to assume that anyone could draw the conclusion about prerogatives of management or labor union leaders, if they had known about this long situation at Lockwood, I don't think would follow.

Q. Lockwood was eventually liquidated, was it not? A. When it became unprofitable and was losing at the rate of 400,000 dollars a year, it was liquidated by its directors and stockholders.

Trial Examiner: Well if we are going to go into Lockwood, tell me some more. How long was it unionized?

The Witness: For a period of about fifteen years, sir.

Mr. Updike: I think the record already shows about August or September of 1955.

Mr. Dyer: All right.

Trial Examiner: That is when it was liquidated?

Mr. Updike: Yes, sir.

Q. (By Mr. Dyer) As to the Lockwood Mill, it had sold through Deering, Milliken for that same length of time, fifteen years? A. And for much longer than that, yes, sir.

Q. Did Deering, Milliken and Company own stock in that [2926] mill throughout that period? A. They owned some stock in that mill throughout that period.

Q. When it was liquidated, did Deering, Milliken own the majority of the stock in that company? A. Deering, Milliken Company did not.

Q. Did you, along with Deering, Milliken and Cot-Wool, own a majority of the stock in that company?

* * *

[2928] The Witness: I could give an answer to that. There was little if any change in the percentage of interest that [2929] Deering, Milliken or I or members of my family had in the Lock-

wood Manufacturing Company over a period of a number of years prior to the time the stockholders voted to liquidate.

Q. (By Mr. Dyer) Was that a majority interest? A. I don't have those figures before me at the present time. And I don't honestly know.

Q. All right. A. It was a large interest. Whether there was a majority interest or not, I do not know.

Q. All right. Would you proceed with the editorial, sir? A. Yes, sir. The next is "This has been the case for three generations of Milliken operations."

I think that is not a correct statement. It would be my belief that there was never any labor union problem, if that is the proper way to describe it, in the time of my grandfather.

So that statement wouldn't be correct.

Then it goes on "When the Madison Woolen Mill at Madison, Maine, became not only unprofitable but unionized, Mr. Gerrish Milliken liquidated it, although the Cowan Farnsworth Mill in the State of Maine still operates and must, therefore, be profitable."

First of all, the stockholders of the Madison Woolen Company voted to liquidate. And there were a large number [2930] of stockholders of the Madison Woolen Company.

The Madison Woolen Company had been unionized for four or five years and operated under union contracts prior to the time when the stockholders voted to liquidate it.

The specific instance that brought about the calling of a stockholders' meeting and the stockholders' decision to liquidate was that management had purchased 44, I believe, of new looms, automatic looms, to replace the non-automatic

looms that were in the mill. And when they arrived in the mill and management asked the employees to run an engineered assignment on these looms, similar to that which was being handled by competing mills in the rest of the State of Maine, the operatives of the weave room at Madison walked out.

All of the other employees in the mill also walked out. And the stockholders and directors took that as an indication that the people in the mill would not cooperate in trying to reduce costs. They felt it was, therefore, foolish to operate in an old wooden building, which it was, which would have had to have been rebuilt and modernized, and that the expenditures involved did not justify continuing. And they voted to liquidate the operation.

Q. Now, let me ask: did you or your family, through your various interests, have a majority of the stock of that company? A. Yes, we did.

[2931] Q. All right. Now would you continue? A. "When the Dallas Manufacturing Company of Huntsville, Alabama became unionized, the Milliken's liquidated, contrary to the opinion of many local people that such would not be the case."

That is incorrect. Dallas Manufacturing Company of Huntsville, Alabama, like three other textile mills in Huntsville, had been unionized for some time. There were a great many stockholders in the Dallas Manufacturing Company. After the mill had been on strike for a period of some six months they decided that as stockholders that it did not justify continuation because of the situation as regards labor as they saw it, and also because of the fact that this was an old mill; that it manufactured wide sheetings. The wide sheetings were finished at a bleachery in Wappinger Falls, New York which was some six or seven hundred miles

distant from Huntsville, Alabama. It was one of the few instances where a sheeting bleachery was not adjacent to the sheet plant itself.

Therefore, there was an added cost of transportation that had to be figured into the cost of goods, and with the cost of transportation steadily increasing, they felt that that was an economic consideration over and beyond the labor strike situation, and that the two put together militated [2932] in favor of liquidating the corporation and the same thing took place at or about the same time at another mill in Huntsville and three or four years later another mill also voted to liquidate because of the labor situation in that community.

Mr. Janes: Mr. Trial Examiner, may I interrupt at this point to ask a single question to piece out this story so that we will have it at this point on the spot?

Trial Examiner: Yes

Mr. Janes: Mr. Milliken, was it not a fact that that the Dallas situation, the company had been asked to discuss provisions of a contract and that management had refused to do so unless the union had assumed responsibility for the strike?

Mr. Updike: I don't understand the question myself.

Mr. Janes: May I rephrase it?

Shortly before the liquidation, did the company refuse to discuss any provisions dealing with a contract with the union until the union had assumed responsibility for the strike?

The Witness: Mr. Janes, I don't remember. I was not an officer of the company. It was many, many years ago. I was a director.

Q. (By Mr. Dyer) Did you or your family through various interests control the majority of stock at Dallas Manufacturing Company? [2933] A. I don't know. It was a large interest. Whether it was the majority or not I do not know. But there were many stockholders.

* * * *

[2934] Q. (By Mr. Dyer) Now, would you continue with the editorial, sir? A. "We ourselves are small shareholders in Darlington; and from experience and acquaintance, we knew the minute the union election vote was announced we would receive a call for a special meeting to vote for liquidation."

I could not possibly know what Mr. Bennett knew when he wrote the article.

Mr. Updike: If Mr. Bennett wrote it?

The Witness: Yes, if Mr. Bennett wrote it.

Q. (By Mr. Dyer) Does Mr. Bennett customarily write all the editorials of this magazine? A. I think he writes a great many of them.

Q. Do you know whether or not he wrote this one? A. No, I don't. I just assumed it.

Q. Was Mr. Bennett a shareholder in Darlington? A. He says here that he was.

Q. Do you recall him being such? A. I don't know——

Mr. Updike: The stockholder's list is in evidence. We can verify it.

[2935] Mr. Dyer: No.

The Witness: There was a Bennett. I think it was his son, Mr. Dyer.

Mr. Dyer: All right.

The Witness: "We know something about the effect of mill losses to a community having lived through hundreds of them in the northeast."

I assume that that is a fair statement.

"On the other hand as one of the owners of Darlington, even though an infinitesimal percentage of those shares is held in our name, we could do nothing other than vote to terminate the operations of the company, if management responsibility was going to be shared with the Textile Workers Union of America."

It is my recollection that whatever stock was owned by the Bennetts was voted in favor of liquidation.

Q. (By Mr. Dyer) Now, when this memorandum was sent to the individuals as shown on the front page, you did not attach to this memorandum, did you, a summary of the comments which you have just made discussing the points with which you did disagree? A. I remember that all I sent out was the letter that you have here, Mr. Dyer.

Mr. Updike: I assume Mr. Dyer was asking a rhetorical question, Mr. Buchanan.

[2936] Trial Examiner: Mr. Dyer was underscoring testimony which we have already had.

I have noted that the editorial was passed around without comment. And I think I got that only from the witness.

Q. (By Mr. Dyer) Mr. Milliken, do you recall reading this quotation from the South Carolina State Chamber of Commerce? That is the second page? A. Yes, sir.

Q. And this was, therefore, —after reading it you decided to include it with this memorandum? Is that correct? A. Yes, sir.

* * *

[2943] Q. (By Mr. Dyer) Mr. Milliken, is it your testimony now that you do not recall sending copies of General Counsel's N-2 either to Deering, Milliken or to any of the mills? A. No, sir. I said that I might have sent this to the directors of Darlington who were located in Deering, Milliken and Company in New York.

Q. You might have, but you don't recall doing so? A. I think I probably did.

Q. Did you send copies of this to any of the other mills? A. That I do not know.

Mr. Updike: Will you strike out "other"?

Q. (By Mr. Dyer) Did you send copies of this to any of the D-M mills? A. I don't remember, sir.

* * *

[2944] Q. (By Mr. Dyer) Mr. Milliken, let me ask this: Did you send copies of various brochures to—I am referring to one in particular, something called "Mainspring of Human Progress" to the various high schools and universities and college teachers in the State of South Caolina? A. Yes, sir.

Q. In what capacity did you do that, sir; just as an individual or as President of Deering, Milliken or what? A. Well, I sent it over a personal letter, over a personal letterhead.

Q. All right. Did you also make available to the various mills copies of this same brochure? A. Yes, sir.

It is not a brochure. This is a book called "The Mainspring of Human Progress," by Henry Grady Weaver.

Q. Were you, as such, on the lookout for books or manuscripts or brochures to send to the mills on a topics which you thought would interest them? A. We were talking about sending them to school teachers.

Q. Yes. But did you also send things like that to the mills?

[2945] Trial Examiner: I think you told us you also sent this to various mill treasurers. Was that the question?

The Witness: This was a book which dealt with the free enterprise system and what it had done whenever it had been allowed to operate freely in the history of the world. And as such, I thought it was of basic interest to all persons to whose attention I could bring it.

It is published by the Foundation for Economic Education which is located just outside of New York. Of which I am a Trustee.

* * *

Trial Examiner: General Counsel's N-3 is received.

* * *

Q. (By Mr. Dyer) Mr. Milliken, this memorandum was sent to the various mill treasurers, is that correct? A. Yes, sir.

Q. And this was in connection with a bill about lowering tariffs; is that right? [2946] A. Yes, sir.

Q. I note that there are four names at the bottom which appear to be some of the mill treasurers who received courtesy copies. Was this also directed to various plant managers as well as treasurers? A. It was, yes.

Q. And in this you ask them to write to the President and Sherman Adams about this bill; is that correct? A. That is correct.

Q. You also state in the second paragraph: "This is also to remind you to please see that as many of your employees as possible write to their senators pointing out to them what great jeopardy our textile industry will be in if any action is taken to reduce the tariff, paving the way

for more Japanese goods to come into our market."? A. That is correct.

Q. Did you receive reports from the plant managers and treasurers as to their action taken in this regard? A. I don't remember. I believe some of them wrote to me and told me what they had done and some did not.

Q. All right.

The next paragraph states: "In this connection, I would like to suggest that you order from the Textile Information Service through the ACMI, Charlotte Office, copies of a booklet they have prepared called "Danger Ahead for [2947] your Job."

"This book is extremely well prepared and I would like to suggest that you distribute one to every employee.

"The whole situation is a matter of life and death to our industry. And I hope that all of you can be as successful as Garland Simmons"—who is Garland Simmons? A. The Treasurer of the Drayton Mill.

Q. "—was in getting your employees behind a letter writing campaign program to the Senate. A thousand letters were written from Drayton to Congress."

You did receive a report from Drayton on that? A. Garland Simmons lives in the same town I live in. He told me what he had done.

Q. Now this booklet which you describe in this pamphlet, was this a free booklet? Or do you know? A. I think not. I think there was a charge for it. Remember, Mr. Dyer, that I testified before that the whole industry was aroused because of the many mill liquidations that had taken place because of the imports from Japan. And I had been asked as President of a number of mills to do everything I could to get as many letters as possible into the Senators and into the White House to urge the further

lowering of tariff and then at the same time other managers were doing the same thing.

Q. Was this to be considered an authorization from you for [2948] the various mills to expend the money necessary to buy these booklets for their employees? A. No, sir. This was urging that they take action to do this and to advise them that there was a booklet available that would help them to sell the store, which is a very complicated one, to the people who I hoped they would encourage to write letters.

Q. You talk about "getting a booklet for every one of the employees." Was it necessary for the plant manager or mill treasurer to have some authorization to expend money for these? A. No, sir. And I think you will remember that it was testified that every treasurer had a minimum authorization of 25,000 dollars which he could spend for capital items with no control over how it would be expended.

Q. Would this come under a matter of expense? A. Yes, sir.

* * *

[2952] Q. (By Mr. Dyer) Mr. Milliken, have you sent other memoranda to the mills urging the treasurers to send telegrams to, in one instance, the Secretary of Agriculture, in regard to the cotton staples? A. Yes, sir. That at the request of our Trade Association.

Q. And did you receive replies from the treasurers as to whether they had sent such telegrams to Mr. Benson? A. No, sir. It wasn't customary for them to do that.

Q. Do you recall that in that memorandum that you wrote to the mills that you set out the style of telegram which you wrote and asked them to vary it somewhat and send one? A. Yes, sir.

(The document above-referred to was marked General Counsel's Exhibit N-4 for identification)

Q. (By Mr. Dyer) Mr. Milliken I show you a copy of a letter addressed to you from Mr. Oeland dated February 24, 1956 which I have marked General Counsel's N-4.

Would you look at it and tell us what it is about? A. Yes, sir. Mrs. and Mr. Oeland went to a precinct [2953] meeting this morning of the Democratic Party. He says he was selected along with Mrs. Oeland as two of the 36 delegates of the precinct to go to the County Meeting and got the resolution approved for this precinct.

He says he did not have time to line up someone in other precincts.

Q. What was the resolution, do you recall? A. It was a resolution against Japanese Imports.

Q. Was it something that you would ask the Treasurers to take to the precinct meetings? A. That the South Carolina Textile Manufacturers Association was trying to get all mills who were members of the Association to work on this in their communities.

Q. And had the request come through you to the various mill treasurers to work on this? A. I guess so, yes, sir.

Q. Did you receive reports from the other mill treasurers similar to this one from Mr. Oeland? A. I don't believe so.

* * *

[2958] Q. (By Mr. Dyer) I take it from this memorandum that you were keenly interested in the problem of securing adequate personnel for the mills; is that right? A. Yes, sir.

(The document above-referred to was marked General Counsel's Exhibit N-6 for identification)

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[2959] Q. (By Mr. Dyer) Mr. Milliken, in the first paragraph you refer to Ken Lowry setting up a 3-day meeting with the heads of the industrial engineering departments of the Technical Colleges in the South. And you give the dates.

You say: "He is explaining our business to them with the hopes that they will be more inclined to recommend to their best engineering students that they come into textile engineering rather than going into electronics or aviation."

Can you tell us whose idea it was for this meeting to be set up? A. I think it was originally Charley Johnson's idea.

Q. To whom did he propose it? To you or Mr. Lowry? A. I think to Mr. Lowry.

Q. Did Mr. Lowry talk to you in regard to the idea? A. Yes.

Q. You told him it would be a good idea? A. Yes. If we could sell the idea that our business was a good business to recommend that their students go into.

Q. Did you tell Mr. Lowry you thought it would be a good idea for him to go ahead with it? A. I did.

Q. This was another effort to try to get better qualified men into the various mills, is that right? A. Yes. Of managerial caliber.

* * *

[2960] Q. (By Mr. Dyer) In other words this was a Deering, Milliken project rather than being an industry-wide project, is that right?

Using the term "Deering, Milliken" loosely? A. May I say in answer to that that at the same time projects industrywide addressed to the same end were also going on.

Q. But this was your own project? A. This was the project of Deering, Milliken Service Corporation, yes, sir.

* * *

[2968] Mr. Dyer: Mr. Examiner, I offer this exhibit marked General Counsel's N-10, being a memorandum to various mill treasurers from Mr. Milliken, dated March 1, 1955.

Q. (By Mr. Dyer) In this memorandum you are concerned with pneumafil equipment? A. Yes, sir.

Q. In the memorandum you state: "In the immediate future we are planning to install a great deal of pneumafil equipment."

Q. Now: "In discussing it with one of the treasurers, he made a suggestion for collection of the waste at the frame rather than at a central spot, his thinking being that it would be easier to control the amount of waste if you could get a frame check."

You complete by saying: "It is my understanding that this can be accomplished with a central station control of the air if that is desired to tie in with your present air condition equipment."

This, I take it, is the suggestion of yours to the mill installation of this new equipment that they might consider having a perfect frame collection rather than a central collection; is that right? A. They were studying pneumafil, as pointed out, and this [2969] was passing along to them without recommendation information that I picked up from one of the treasurers who had made his decision as to the

type of pneumafil that he was going to buy. Which I thought they would be interested in having when the time came for them to make their individual decisions.

Q. You state in the first part "In the immediate future we are planning to install a great deal of pneumafil."

Was this in connection with an improvement program in all the mills? A. The pneumafil company—it is a Swiss Company—had brought out a device which is an air suction device that removes the lint from the drafting element of the spinning frame. And it was equipment that was very rapidly being bought by the entire textile industry because it showed a very high return on the investment.

And this was something that many mills that I was connected with were planning to install, yes, sir.

Q. Now, in regard to equipment of this type, did you attempt to keep some sort of close watch on what was developing in the textile fields that the mills might consider installing? A. No, sir. I made it a habit to pass along in the form of letters like this any information that I picked up from conversation with a treasurer of a mill which I was connected with or any other mill that I visited or any person whom I [2970] happened to meet on a plane or train or at conventions, so that they might have information that might not be—that they might not have picked up some other way.

* * *

[2971] Q. (By Mr. Dyer) The exhibit refers in the first paragraph to the request for capital expenditures.

I think we have had some testimony in the past as to how these requests are made? A. That is right.

Q. Let me see if my understanding is correct?

That when a mill wishes to install an item which would be considered a capital expenditure they make up the form which I think is in evidence in one of the previous exhibits

showing what the equipment is, what the cost of it is, and what the return on investment will be, and submit it to you? A. Can I say that that was as they came to firming up the specifications on the purchase of equipment which had previously been authorized by the Board of Directors.

Q. All right.

Was that the procedure as it is followed? A. That is right.

Q. All right. And in this instance, after receiving a number of these requests for capital expenditures in regard to the installation of a 40 inch section beam, an automatic beam-handling equipment, had noted that it was possible to obtain a very good return on that installation? [2972] A. Could I go back just a minute to be sure I have covered it completely?

Q. Yes. A. The directors at Darlington, when a machinery—when a program of machinery acquisition was presented to them, would authorize the officers, namely, Mr. Oeland and myself, to proceed with that program, if together we agreed it was a—agreed on further investigation and getting the final facts on the cost of it, we together deemed it was an intelligent and proper purchase for Darlington. Which is why it came to me for signature.

Q. Well, was that the same in regard to all of the D-M mills? A. Yes, sir.

Well—yes, sir.

Q. And in this instance, apparently you had noted a good return on a particular piece of equipment? A. That is right.

Q. And you state "I am therefore writing this letter to ask you if you would please make a study of what the return would be on such an expenditure."

These were at other mills which had not made requests for such expenditures, is that right? A. That is right. Or who were in the process of repairing them, yes, sir.

[2973] Q. "Could you please all have this in my hands by February 1st, and then we will review the situation for the whole organization and see whether we cannot work out a very advantageous price with some supplier of this equipment and thus make the returns better than they otherwise would be."

"Please send a copy of your report to Ken Lowry's department so that he can consolidate this information.

Did you receive a consolidated report from Mr. Lowry's department as to this information? A. Yes, sir.

From those mills that were interested in buying it. Not from all mills.

Q. Well, you have certain mills listed here; is that right? A. Yes, but I didn't receive it from all of them, because they decided that they didn't want to buy it.

Q. Did they in the initial part, if you know, consider what their return would be before deciding whether or not to——. A. Well, Mr. Dyer, in some instances there were space limitations and styling limitations which they wrote back to me militated against there even being any point of considering it in their particular mill.

Q. I see. A. So only those mills that felt right off that it had a [2974] chance answered and sent in information to Ken Lowry.

Q. Now, similarly on the same date, if you recall, did you send a memorandum to all the individuals noted except to Mr. Stone on overhead loom cleaners?

Let me show it to you. A. I will be glad to accept the fact that I did.

Q. And here again had you studied the capital expenditures and thought it was a good rate of return and were asking these mills to study that and submit a report to you and a copy to Mr. Lowry's department? A. That is correct.

Q. This was handled in the same way as the other equipment; is that right? A. Yes, sir.

Q. In your memo in regard to loom cleaners, did you also ask the mills to make a study of what you thought—a study of what they thought loom cleaning could do for their mills?

Well, it might be simpler if I just offer this, because I am trying to pick it out piecemeal rather than put it in.

Mark this General Counsel's N-12.

Mr. Dyer: Mr. Examiner, I offer N-12 in evidence.

Trial Examiner: General Counsel's Exhibit N-12 is received.

(The document above-referred to was marked General Counsel's N-12 for identification and received in evidence.)

[2975] Q. (By Mr. Dyer) I refer to the second paragraph:

"I am writing this letter to ask if you will please plan to make within the next couple months a study of what you think loom cleaning can do for your mill, and then what I would like to do is consolidate these in terms of return on the investment.

"We will then have an opportunity to compare the rates at each mill, and if it looks attractive, it may be possible for us to make a deal with some supplier whereby we would get a specially good figure based on a quantity purchase."

This loom cleaning, is that encompassed—does that encompass the overhead loom cleaners which you mention in the first paragraph? Or was that stated to go further? A. No, sir. There were three different manufacturers making, as I remember it, overhead loom cleaning equipment.

Q. My question is: Whether the study of loom cleaning goes further than just the overhead loom cleaning? A. No, no, sir. It means just what return on investment could be made by purchasing equipment—by purchasing equipment for cleaning the looms by blowing air down on them.

Q. You had no idea of other types of loom cleaners in this study? A. No, sir.

Q. Thank you.

[2976] Mr. Dyer: Mark this General Counsel's N-13.

(The document above-referred to was marked General Counsel's N-13 for identification)

Mr. Dyer: Mr. Examiner, I now offer a memorandum from Mr. Milliken to various mill treasurers and I believe managers dated January 17, 1955.

Trial Examiner: General Counsel's N-13 is received.

(The document above-referred to, heretofore marked General Counsel's N-13 for identification was received in evidence)

Q. (By Mr. Dyer) Mr. Milliken, in the opening paragraph you refer to a—"As a result of the very excellent meeting that was held at Gaffney yesterday, it was decided by the treasurers that we would ask Mr. Norton to be host to two meetings which would be held on the same day at Gaffney."

What was the meeting first referred to? A. I am trying to recall by reading this letter.

Q. All right. Go ahead. A. I think it was—at this time all of the—I think this was the result of a suggestion made by the treasurers at one of the meetings that one of the treasurers meetings ought to be held at a mill.

And this meeting apparently—and I do recall it—was held at Gaffney. And all of the treasurers present—and I was present—made a trip through the mill, following which Mr. Norton, the treasurer of Gaffney Manufacturing [2977] Company, called on his overseers to make a statement as to what they had accomplished in the way of new things within the preceding fifteen months or so, or what they were in the process of doing to improve their quality and lower their costs.

And better maintain their equipment.

Q. You go on to say: "It was decided by the treasurers that we would ask Mr. Norton to be host at two meetings which would be held on the same day at Gaffney. One of these meetings would be for all the master mechanics and plant engineers from all plants." A. That was the treasurers asked Mr. Norton at that meeting "would you let the—" —or, "—would you be host to all the master mechanics and have Mr. Cook, your master mechanic report to them what he has done in maintaining the condition of your mill."

Q. All right. A. And the other was a meeting to which would be invited the mills interested in carding activities. And Mr. Holland, the overseer of those activities at Gaffney would tell them what he had told us the preceeding day.

Q. In other words, the second thing as you state will be a discussion of opening, picking, carding, drawing and

roving. And the overseers—— A. That is known as the card room.

Q. And the card room overseers from the other mills were [2978] to attend such meeting with him. A. Well the treasurers said they wanted their card room overseers to go to this meeting and listen to what Mr. Holland had done if Mr. Norton would agree to be host to a meeting for them.

Q. All right, fine.

I take it that there would be an interchange of ideas between the card room overseers from the other mills? A. They would listen to what Mr. Holland had done and visit his card room.

Q. And were the card room overseers from the other mills expected to state what they had done, or was this just—— A. Not at this meeting, no, sir.

Q. Mr. Milliken, was the meeting in regard to card room activities—well let me show this to you.

Mr. Milliken, I show you this memorandum to the various mill treasurers. I think it is dated four days from the previous memorandum. And in this memorandum you talk of the—"opening and picking, carding, drawing, roving, warp preparation and weaving on the 10th instead of the 17th of February."

Is this a different meeting than the one referred to in the previous memorandum?

Trial Examiner: Is that a different meeting, you say?

Mr. Dyer: Yes, sir.

[2979] The Witness: Yes, sir, it is.

Q. (By Mr. Dyer) Let me ask you: in this meeting which you refer to in this memorandum——

Mr. Dyer: Well, let me have it marked General Counsel's N-14.

(The document above-referred to was marked General Counsel's Exhibit N-14 for identification)

Mr. Dyer: Mr. Examiner I offer General Counsel's N-14 in evidence being a memorandum dated January 21, 1955 to various mill treasurers and managers with copies going to members of the Service Corporation from Mr. Milliken.

Q. (By Mr. Dyer) As to this meeting referred to in the memorandum, can you tell us how this meeting was set up and what it was to encompass, Mr. Milliken? A. Well, I think what must have happened is that there is a third letter that is missing here which outlined the purpose of the meeting that is referred to in this new exhibit.

And that that has nothing to do with the other one referred to.

Q. All right. Do you recall what this meeting was? A. I think what probably happened is that at that same meeting that was held in Gaffney on January 16 where each of the overseers of Gaffney made a presentation, the treasurers felt it would be an excellent idea if a meeting could be set up where each mill that was doing carding, drawing, roving, [2980] warp preparation, and weaving would get up before the whole group and in a 30-minute period briefly say what they were doing so that all those who attended would have the benefit of the experience of those mills who were speaking on the program.

Q. Do you recall whether or not you wrote the memorandum to the mills asking for a recommendation on the best procedures in operating these particular operations?

A. No, sir. My memory isn't a hundred percent clear on this. But I am sure from the sequence here and what this letter says is that what undoubtedly happened is that when the treasurers were together at Gaffney on the 16th, which was five days before this letter of the 21st was written, and was a correction of a letter that was probably written on the 17th, that the treasurers at that meeting at Gaffney on the 16th decided that they ought to have such a meeting.

Q. The "we" that is referred to in the second paragraph, Mr. Milliken—"as you know we have asked each mill making a presentation to schedule it for 30 minutes, leaving a 30-minute period for questions and answers.",—do you refer there to what has been previously described as the "agenda committee"? A. I think by "we" I was referring to the treasurers who got copies of this letter. This was addressed to managers of the plants.

Q. I see.

[2981] Trial Examiner: Oh, this is to managers, not to treasurers?

The Witness: The treasurers got a copy. I think the "we" refers to the ones who made that decision that was held at Gaffney.

Q. (By Mr. Dyer) The recommended procedures were to be the procedures recommended by each mill? A. By the treasurers when they were together that day.

Oh, they were going—which recommendation——

Q. Referring back to the first paragraph "—we will hear reports on the recommended procedures in opening, picking, carding, drawing, roving, warp preparation and weaving on the 16th instead of the 17th of February." A. Right.

Q. Are those the procedures which each mill was going to represent on those? A. Which obviously were the procedures that they were following as individual mills.

Q. We have talked at some length about treasurer's meetings, Mr. Milliken. How long had the treasurer's meetings existed as a system or as a meeting, as such? A. Well, there never was any set procedure. Originally mills who were interested in a particular type of problem would get together to discuss that problem. Carded cotton mills would get together. Filament weaving mills would get together.

[2982] Then at some—and that perhaps was something that took place, the first of such meetings, 15 or 13 years ago. At some later date, the men who attended said that they thought it would be a good idea if a quarterly basis of meeting would be a good one. And as I remember it it started out on that basis with all of the mills, whether they consider woolen, worsted, filament or cotton meeting for a couple of quarterly meetings.

It was the practice at the end of every meeting to ask for comments from those who had attended as to whether they thought the meeting was worthwhile and what the recommendations should be for the next meeting, what the agenda should be for the next meeting, and who they would like to have work on the agenda.

There was a period when the carded cotton mills met separately on a quarterly basis. The fine goods mills, the combed goods mills and the filament weaving mills met then next on the second day, and the woolen and worsted mills met together on the third day.

Then there came a time when the treasurers said that it was an awful waste of time preparing for these meetings on a quarterly basis; and they thought they should only be held every six months.

At one point they also decided it would be desirable for the carded cotton mills and the combed cotton mills to meet [2983] together because they had certain community common problems. Then there was one time when all of them met together again and each mill got up and said what they were doing about public relations in their community; what they were doing to interest the doctors and preachers and the other people in their community. And they got up one right after the other and related what they were doing with everybody present.

So that, in general, was the way the treasurer's meeting met. We just came across one. And I have forgotten a matter that met at Gaffney and went through a mill.

There was a time when all of them decided they would like to meet down at the New Holland plan of Pacolet; all of the cotton mills, that is. And they held a meeting there and went through the mill down there and listened to a program.

In other words, there was nothing said about this down there except that at the end of a meeting a date was set for the next meeting and the types of problems they wanted to discuss were decided upon; and people were asked to proceed with preparing the information for the ensuing meeting.

Q. Well in 1955 and 1956, can you tell us what the basis of the meetings were there? A. They were at that time being held I think on a quarter basis where the carded mills I believe—met separately from the combed mills and the woolen and worsted mills.

Q. Was that true in 1955 and 1956? [2984] A. I can't vouch for that. I can vouch, I think, for the fact that they were on a quarterly basis.

Q. Then I take it that all the references we have made up until now was to treasurers meetings meant the carded mills treasurers' meetings; is that right? A. And sometimes I think the combed mills may have met with them.

* * *

[2989] Q. (By Mr. Dyer) Could you find out whether the Fund was so set up that the amounts contributed by various contributors were earmarked as this would seem to indicate? A. No, sir. If it would help I could give you a little background on the foundation.

Q. All right.

Would you, please. A. One of the responsibilities that the Board of Directors of Darlington considered that it had was the handling of all profits and funds made by the company either from profits or depreciation. Thus, the amount of the dividend distribution or the amount spent for new machinery or the amount to be given away to eleemosynary causes is something that fell within their specific responsibility.

When the Deering, Milliken and Company set up the Deering, Milliken Foundation approximately in the early 1940s, I believe, when the Directors of Darlington would meet from time to time and would discuss the question of requests for charitable contributions, they came to the conclusion that what they ought to do if they had a profitable [2990] year and could determine exactly what their earnings had been and what amount would fall within the amount that is the most that you can give to charity and have it as a deduction against your income taxes—when they could determine what that amount was at the end of the year, and as I say if it had been a profitable year, they would then make a contribution to the Foundation of a certain amount of money which they might estimate would

be the amount that the treasurer might have calls for from local charities and so forth for contributions in the future.

Then when Mr. Oeland would find a situation where he felt that a contribution might be made and properly be a donation of the Darlington Manufacturing Company, he would write a letter to the trustees of the Foundation with his recommendation that they might consider making a contribution to this particular charitable cause.

Q. Was the same system followed at the other DM Mills? A. At some of them, it was, but not at all of them.

Q. You say some of them.

Can you give us an idea of approximately how many? A. Well, the Pacolet Manufacturing Company, for instance, had a foundation of its own to which it made contributions. I would say that maybe forty percent of the mill corporations that are on that sheet of paper we have been referring to made contributions to the Foundation.

* * *

[2995] Q. You then say: "I would be very interested in having you write me what you did with your organization as a result of this meeting and then I will plan to pass on to the rest of the organization a collection of the most significant results that came from this meeting."

"Could I please have a letter from you about this."

Are these all treasurers listed at the top or are some of them plant managers? A. Some of them are plant managers.

Q. Did you receive a reply from all of them in regard to [2996] this memorandum? A. I very much doubt it. I very seldom got replies from all mills to letters of this kind.

Q. Can you tell us what percentage would not send you reports? A. Well, it varied.

I can remember on different types of reports where I was really seeking an answer that I had to follow through three or four times before I got an answer from every mill.

I think that my purpose in writing this letter was to encourage each person to whom it was addressed to have their overseers go through the exercise of writing a report to them so that they would think back once again to what had happened to this meeting and perhaps in thinking back and writing a report remember something that they could put into practice in their mill if they felt that it had application in their mill.

Q. In other words, this was just a device to jog the mill a bit; is that right? A. That is really what it was, yes.

Q. Now, did you upon occasion receive reports from mills which you circulated to other mills?

I had better give you a concrete example of it.

(General Counsel's Exhibit No. N-17 was marked for identification.)

[2997] Q. (By Mr. Dyer) I hand you what has been marked GC N-17.

Mr. Dyer: Well, I now offer it in evidence, being a one-page memorandum with an attachment from Mr. Milliken addressed to various mill treasurers and plant managers.

Trial Examiner: GC N-17 is received.

(The document heretofore marked General Counsel's Exhibit No. N-17 was received in evidence.)

Mr. Dyer: I will rephrase that question.

Q. (By Mr. Dyer) If you will notice there are various written notations on the top of here. Apparently they are Mr. Oeland's notations and the names of various people at the Darlington mill.

In the memorandum you refer to the report from Gainsville for the last month. Did you receive reports from all mills every month or on a four-weekly period? A. I received a communication from them, yes, sir.

Q. What was the form of the communication? A. Generally in the form of a letter.

Q. And the memorandum says that the attached are excerpts from the Gainesville Report.

* * *

[2998] Q. All right.

Now, did you on other occasions send excerpts from these various reports around to the various mills? A. Occasionally, Mr. Dyer, when I would see something—and I haven't read this yet—that seemed to me to be interesting, I would maybe take it and send it out, because it represented a statement from an experienced man.

Remember I was not experienced in the manufacturing business, have never worked in a mill. And I know that a great many, if not all, of these men to whom I was writing took with a very large discount things that I would pick up and try to get them interested in and to investigate to see if it had application in their mill.

[2999] And when I could sort of pass on a recommendation that came out of the mouths of an experienced man, I would sometimes use that method.

* * *

[3000] Q. (By Mr. Dyer) Can you tell us what the mill achievement meetings were? A. At about this time, Mr. Dyer, I attended a couple of meetings at mills that the

treasurers asked me to come to where they had their personnel make a summary statement of what they had accomplished and what their plans were, similar to that meeting at Gaffney that we talked about on Friday.

I think I maybe attended four or five such meetings in all.

Q. These were individual meetings, individual mill meetings; not meetings of several mills; is that right? A. That is right.

Q. You state further that you notice there are a great many different types of organizational setups in each of the mills. And you say: "I think some benefit can come from comparing the organization charts from our different operations."

Who did you plan to have do the comparing? Yourself or somebody else? [3001] A. No, sir.

As I say in these few meetings that I attended, I was impressed with the fact that there wasn't any mill that had the same organizational setup as any other mill. And because they were all so different in their concepts of how they wanted to handle it, I thought that some of them might be doing things in terms of the way they were organized that could be helpful to the others.

Q. Well, to come back again to it: Who was to do the comparing? Were you going to have the charts circulated from mill to mill? A. That was one of the ideas I had. But I never got an answer from all mills to this letter. Nor did anything come out of this.

Q. Well, is it possible that some of the mills didn't have an organizational table? A. No. I think they all did have.

Trial Examiner: Did you say you got no replies? Or did you?

The Witness: I said I got very few replies.

* * *

[3002] Q. (By Mr. Dyer) Mr. Milliken, there is a chart of some type at the bottom. Would that be Darlington's organizational chart? A. Well, I presume that is what it was, with everybody reporting to the treasurer, yes, sir.

Q. Did you receive a reply from Mr. Oeland giving the chart of some type? A. I can't remember. You would have to ask him that.

Q. All right. Thank you. A. Let me add to my answer on that question you asked me about this report, please.

I think that I probably did get answers from most of the mills involved. But, as I look back on it now, the organizational setups as they came in were so entirely separate and different that, as I can remember, there was no [3003] way that I could see that I could put them together and in any way have them be of benefit to any mill.

Q. Was that true from the size of the mill or complexities of the mill or what? A. No. It is as to what functions reported to who. Some mills had technical superintendents. Some mills had not. Some mills had the engineer or master mechanic reporting to the technical superintendent. Some of them had them reporting to the production superintendent.

In many mills, the personnel function or the tax function or the other functions were part of somebody's job, and maybe in the office manager's sphere of influence, as it was here; and in another mill there might be a separate man reporting to the superintendent; and in another instance he would report to the manager of the plant. Everything was so entirely different.

There was no conclusion of any kind that could be drawn from the information that I received.

Q. (By Mr. Dyer) Did you bring this up as a topic at one of the treasurers' meetings? A. No, sir.

Q. Was it brought up by anyone at one of the treasurers' meetings? A. No.

I think everyone felt it was too complicated and too [3004] personalized to each mill for any benefit to come out of a general conversation.

* * *

Q. (By Mr. Dyer) Mr. Milliken, in this memorandum you are asking Mr. Lowry at the Service Corporation and Mr. Newton at the Research Corporation about putting emphasis on weaving operations.

You start out: "All of the mills in Deering Milliken have made tremendous strides in the recent past on improving the quality, cost and machinery maintenance in their [3005] yarn making departments. A large part of this progress has been caused by the great attention that has been focused on these problems at the meetings that we have had. Now that we have made these improvements in our yarn, it seems to me that an equally strong emphasis should be put on the weaving operation as to quality, efficiency, cost, loom maintenance, et cetera."

"It seems to me that we are ready for an attack on these problems, and I am writing this letter to ask you to write to the treasurers and to me your recommendations as to how we can best start on such a program and what the full program should be."

Now, there are some notes at the top apparently from Mr. Oeland, which I can't quite make out.

I notice copies of this went to the mill treasurers.

Now, can you tell us whether Mr. Lowry and Mr. Newton got together on setting up recommendations? A. No. I don't have any memory as to what happened as a result of this, Mr. Dyer. All I can add is to this moment no way has been found to—for an individual mill to discuss the improvements that they have made in weaving similar to what they did on spinning, carding and roving, because the weaving problems and the type of looms and the type of fabrics made are so different from mill to mill that there is just no way that benefit can be obtained from having such a dis-[3006] cussion. And no such discussion has ever been held at a treasurers' meeting.

Q. Well, do you recall whether you received any reports from Mr. Lowry and Mr. Newton in regard to that? A. No, sir, I don't.

(General Counsel's Exhibit No. N-20 was marked for identification.)

Mr. Dyer: Mr. Examiner, I offer in evidence what has been marked GC N-20, being a memorandum to Mr. S. L. Smith from Mr. Roger Milliken dated April 20, 1955.

Trial Examiner: General Counsel's Exhibit N-20 is received.

(The document heretofore marked General Counsel's Exhibit Number N-20 was received in evidence.)

(By Mr. Dyer) The Mr. S. L. Smith is, of course, Mr. Sterling Smith, head of the Cost Department at the Service Corporation; is that right, sir? A. That is right.

Q. You state to him "I think that we are probably far away from using the best modern practices of production control known to American industry in all of our mills,

and I am writing this letter to ask you if you will please plan a meeting, and work it out with all treasurers who have production control problems to have their personnel attend a meeting, to discuss in a way you think best how our organization [3007] can adopt the most efficient and inexpensive plans of production control."

Do you know whether Mr. Smith set up such a meeting? A. I am almost sure he did not.

Q. Did he tell you why not? A. I think he told me that the problems were so different at each mill that he could not think of any easy way to attack this problem and that he was—I also think he said that he was operating a one-man department and he just didn't feel he could undertake to do this and do any justice to the idea even if it had been a practical one.

* * *

[3008] Q. Now, you state "It was decided at this meeting that each mill would immediately proceed with the installation of at least one frame of node rings which they would make in their own shops."

Do you mean that all of the mills that attended this mill achievement meeting would do that? A. Yes, sir. These were the carded cotton mills.

Q. All right.

The cotton mills did attend these mill achievement meetings? A. They attended this one, yes, sir. As I mentioned before, there were only four, or possibly five, altogether that I attended.

Q. I see. A. Or that were held with outside people. The mills, I believe, had meetings of these of their own where they would report to the treasurers.

Q. These were with the other mills sitting in on the meeting; is that right? A. That is right.

[3009] Q. You state: "We are doing this because we do not under the circumstances want to enlist an outside supplier to make these rings because it is not possible to patent this idea and we want to keep our competition out of it as long as possible."

You go on to state that they are obviously of the different designs developed by each mill.

You say: "I think it is extremely important that each mill have the benefit of the other mills' ideas, and so at the meeting I asked Frank Rowe if he would discuss with you"—that is, with Mr. Newton of the Research Corporation—"how the Research Corporation could coordinate this program and be of the most help in getting it advanced at the fastest possible speed in all mills.

"Because of the fact that this has worked successfully at Gainesville and also at Farnsworth where they have been using it for some time, it looks like it is something that could be adopted very, very fast by our organization, and I hope that it will be possible for you to put a great deal of push behind it."

Did you receive a reply from Mr. Newton to your memorandum? A. I think we probably talked about it on the telephone.

Q. What was decided to do about this program concerning the node spinning rings? [3010] A. Well, I noted what happened as a result of it, because I was very interested in this project.

About four or five mills set up a frame of node rings; they set up a frame with node rings. Gainesville was the mill in question, which got up to where I think they had twelve frames running with node rings.

This was forty to fifty years old, which is why it wasn't possible to patent it. No mill could make it work out at all; and, as a result, except for the fact that at this writing

Gainesville I think still has twelve frames running and sporadic reports that they think it has great benefits; they still have only twelve frames on it and no other mill has anything.

Mr. Updike: You mean at this time this morning?

The Witness: That is right. So, this idea, for which I had great enthusiasm was another one which didn't work out.

* * *

[3011] Q. (By Mr. Dyer) Mr. Milliken, in the memorandum of May 27, 1955 addressed to the Mill Treasurers, you state in the first paragraph:

"The Institute of Textile Technology is planning to have a meeting in July at Atlanta, Clemson, and Charlotte to bring to the membership the results of the studies that they have made in the past year. They were going to have the meeting at Clemson on Wednesday with a meeting at Georgia Tech on Friday, and I had been hoping that we could work it out so that we could have a special meeting for Deering Milliken personnel alone on the intervening day, Thursday, so that our men could feel free to ask questions without divulging which way our interests may lie."

Then you go on to state that you have discussed it [3012] with Mr. Hance who, I presume, is head of ITT? A. He is the president. yes, sir.

Q. And he has written to you asking whether it wouldn't work out just as well for our mills to attend the regular meeting and then perhaps stay on over and all have dinner together at Clemson, and perhaps have an hour session for questions and answers after the main meeting is adjourned.

And you ask the mill treasurers for their thoughts on the idea.

Did you receive replies from the five mill treasurers addressed? A. I just don't remember.

* * * *

[3013] Mr. Dyer: Mr. Examiner, I now offer a memorandum dated August 25, 1955, addressed to various members of the Service and Research Corporation, with copies going to various mill treasurers. This is offer as GC N-24.

Trial Examiner: GC N-24 is received.

(The document heretofore marked General Counsel's Exhibit No. N-24 was received in evidence.)

Q. (By Mr. Dyer) Now, in the first paragraph you refer to "our wage discussion Tuesday."

What was that wage discussion, Mr. Milliken? A. I don't know, Mr. Dyer. Was that about the time of a general wage increase?

Q. That would be August 25, 1955.

Mr. Updike: That is my recollection.

The Witness: That wage discussion was a meeting with these mills who were listed below who got a copy of this letter attending, at which time the Service Corporation who had been asked to do so by the mill reported on what information [3014] they had been able to get from all over South Carolina in all mills with whom a Deering Milliken—a mill that sold through Deering, Milliken could exchange information as to what rates of pay they were paying in their particular mill.

And you will remember that it was as a result of getting that information that I reported in the earlier trial that Darlington Manufacturing Company found that they were seven or eight cents an hour high on spinning, and I believe weaving.

And at that time they put in an increase of two cents an hour in those two classifications instead of the five cents an hour which was the general industry pattern at that time.

Q. Now, the mills represented by these treasurers named here are all the cotton mills? A. Let me see.

These were all cotton mills, yes, and others.

Q. And woolen and synthetics? A. Yes, sir.

Trial Examiner: All of the woolen and synthetics mills?

The Witness. Yes. Got a copy of this letter.

Mr. Updike: All the treasurers?

The Witness: Yes, sir.

Q. (By Mr. Dyer) Who called this meeting, this wage [3015] meeting, Mr. Milliken? Or was it one of the regular treasurers' meetings? A. No, sir. This was a meeting several of the treasurers had gotten in touch with me by telephone when some organization announced a wage increase—I think it was——

Q. Burlington maybe? A. Maybe Burlington. And because of the tremendous difference in cost that one cent an hour makes in a textile industry because of the very high labor content of a sales dollar, they said that they thought it was very important to find out exactly how their mill stood against its competition in the South Carolina area.

And they suggested that they ask—I think several of them said that they could arrange to exchange information

with some other mill as to their rates of pay. And they suggested, I think, on one or two instances that Ken Lowry find out that information, for instance, as to Mr. Springs, who runs mills nearby where he had previously worked. And that they might bring that information to a meeting so that each mill could benefit from the knowledge so gained.

Q. Was any single announcement made of the wage increases, or did each mill take care of its own at that time? A. Each mill took care of its own, although I believe that I may have been asked the question by the press.

Q. Well, I think if you are referring to the exhibit that [3016] was in the previous hearing, I think that was 1956 rather than 1955. A. I think you are right, Mr. Dyer.

Mr. Updike: It may well be.
Mr. Dyer: Yes, it was 1956.
The Witness: That is right.

Q. (By Mr. Dyer) Now, in this wage discussion, was just the ordinary employees' wages discussed, or were supervisory rates also discussed by these various mill treasurers? A. Information was not collected or exchanged with any other mill on anything above the level of second hand, as I remember it.

Q. In other words, this wage discussion took place on everybody from second hand below? A. It was not so much a discussion, Mr. Dyer, as it was a presentation of the facts that had been collected by individual persons as to what was the wage—as to the facts as to what the wage rates were in specific job classifications at competitive mills.

Q. All right.

Well, was information passed around among these treasurers as to what their wage rates were? A. No, sir.

Q. Wasn't that information available? A. Yes. I think each mill did bring with them their own [3017] rates. And

the purpose that they had asked this meeting for was to find out what the wage rates were in competitive mills in South Carolina.

And when Mr. Oeland, for instance, wanted to know what Marshall Stone was doing in a certain classification where he felt on the basis of what he learned other mills were doing and what he knew he was doing, he would ask—I presume he did ask, say, Mr. Stone what he was doing in that classification.

Q. The mills had no hesitancy about giving one another that information, did they? A. I don't believe so. Any more than our competitors had any hesitancy in exchanging.

* * *

[3021] Mr. Dyer: I offer what has been marked GC N-25, being a memorandum addressed to various mill treasurers and members of the Service and Research Corporation. It is a two page memorandum from Mr. Milliken dated December 12, 1955.

Trial Examiner: And to members of the Research and Service Corporation?

Mr. Dyer: Courtesy copies went to them, yes, sir.

Trial Examiner: GC N-25 is received.

(The document heretofore marked General Counsel's Exhibit No. N-25 was received in evidence.)

Q. (By Mr. Dyer) Now, in the memorandum, in the first paragraph, Mr. Milliken, you refer to the goals being discussed at the big meeting in October.

Was that a specific meeting set up for that, or was this for the treasurers' meetings? A. This was, I am sure, a so-called treasurers' meeting.

Q. And you refer in the second sentence to this: "At that time it was decided that we would meet again in January to hear a report from each and every mill on the progress they had made against their planned goals."

[3022] Then you set up a date there. A. The date was one that I—I was a clearinghouse as to when it was convenient for everybody concerned.

Q. All right.

In the second paragraph you talk about the best method of presenting information. You stated:

"In thinking about the best method of presenting this information, it seems that we would be well advised if each mill would use charts to report on their progress." A. I guess I was ahead of myself in my answer to the question just before the recess; this question of charting came up one meeting later than the one I was discussing then.

Q. All right.

And you apparently worked with Mr. Sibley. And you state: "To this end I have talked with Alan Sibley and he has offered to work out the best form with Ken Lowry, and then if you will plan to get in touch with Ken Lowry, he will pass this information on to you so that we can all be reporting together."

This was to be a single type chart so that everyone could recognize it at a glance? A. To go back to something that was in the middle there that you didn't read, Mr. Dyer, I called attention to the fact that at Deering, Milliken and Company's sales meetings in [3023] New York we had had—or I had had experience at some of the earlier meetings that information had been set up on

charts by individual department heads. And as one chart followed the other, you had to reorient yourself because it was presented entirely differently.

And it caused a great deal of confusion in the minds of the listeners. As a result of that, I was suggesting here that the best way to do this so that there would be the least confusion would be to use one type of presentation, and then it goes on—you said I was in touch with Mr. Sibley.

I was not. I talked with him. But Ken Lowry was in Greenville and Alan Sibley was in Greenville. And for the sake of saving time and travel, they had said that they would work together on what Alan Sibley considered to be the best form for his mill after discussing it with Ken Lowry; and that I thought that if that could be a form of presentation, that everyone could agree on as the way they would present their information.

Q. Do you recall whether Mr. Lowry and Mr. Sibley did set up a form of chart? A. I think Mr. Sibley said—I think he decided what he felt would be right for his operation.

Q. All right.

Did Mr. Lowry pass that information on to the other mills? [3024] A. Yes, sir.

Q. Do you recall at the meeting whether the same type of chart presentation was used by all? A. Yes, sir, I believe it was.

Q. You state "Because each mill will be making a report, it will be necessary to confine each presentation to not more than ten minutes, and in this connection we will ask somebody to ring a bell at the end of ten minutes so that it will be impossible for anybody to go over his allotted time.

"The points that should be covered in the presentation by each mill would seem to be the following:"

Now, the first one is: Progress on expense reduction.

In parentheses you say "(this would report the full goal saving as reported in October, how much it was planned to take out by the January meeting and how much was taken out; and what the plan is for reduction in the next 3-month period.)"

In other words, all the mills have a goal to reduce their expenses? A. Each mill had set up for itself a goal for reducing its expenses, yes, sir.

Q. Number 2 is: The number of jobs on the payroll in October; in January; and projected to April; and the number of persons on the payroll in October, January and April.

[3025] In other words, was there a plan to reduce the number of jobs at each mill? A. On that item number two I believe that I wrote these things down as a result of the discussion with Mr. Sibley, because he told me he had been in this business for a long time. And if all of the savings as reported on this type of presentation that had been made to him for his operation had in fact been made and maintained there wouldn't be any people left working in his operation; that they would come up with a saving of twenty persons and then at another time they would come up with a further saving. But that he had found for his benefit that the only way that he could find out whether progress had been made and not retrogression was to record the actual number of people on the payroll of the operation that he was responsible for at the end of a period, because that was the factual situation and not something that looked rosy on a chart presentation of how much had been saved during a particular week or month with no counteracting

statement of how many people had been put back against a previous saving that had been reported.

Q. Well—— A. Have I made myself clear on that?

Q. Well, I don't think that quite answers the question I asked.

The question I asked was whether there was a program in [3026] progress at each of the mills to reduce the number of jobs on their payrolls? A. It has been a continuing program in every mill that I have been connected with to try and get our costs as low as possible in order that we might survive economically.

The productivity in the textile industry has increased by 47 percent in the last ten years. The highest rate of any industry in the United States as far as I can find out. To keep one's head above water in the textile industry, it is necessary to have a continuing program of increasing productivity to be able to stay in the business.

Q. Well, I think——

Mr. Updike: Productivity per worker?

The Witness: Yes, sir. That is what I mean by productivity, yes.

Q. (By Mr. Dyer) Well, I think we talked around it. But to get down to specifics: Was there a program at each one of the mills to reduce the number of——

Trial Examiner: I think the witness has said there is always a program at every mill.

The Witness: Yes. And each mill has and had such a program constantly.

Q. (By Mr. Dyer) You mentioned some other topics:

A discussion of other goals and progress towards them such as spinning speeds, loom speeds, et cetera. [3027] A. That is all part of the same productivity.

Q. Report on the mill's standing by the mill's demerits by department in machinery inspection reports and their relative standing.

Relative to what? One another, or what? A. Relative to where they were at the—from a previous period of demerit reporting.

Q. That would be the demerit inspections as made by the Research Corporation? A. That is correct.

Q. All right.

The mill's percentage of total waste and their standing on waste.

What do you mean by their standing on waste? A. Whether they were making progress or lack of progress in reducing the amount of waste.

Q. Was there a program of any type in effect to reduce the amount of waste produced? A. Each mill constantly works on that. It is a very important element of cost.

Q. Was there an overall program for all of the DM Mills in that regard? A. There was a man in the Service Corporation of which these mills were stockholders whose job it was to sell waste and make recommendations to the mills on how best to handle [3028] their waste for the sake of packaging and getting the best price out of the waste that they did make and of reducing the amount of waste made in total.

Q. You next mention the number of hours worked without a lost time accident.

The status of a preventative maintenance setup in each department.

I think we have discussed in this case previously the preventative maintenance program. A. Yes, sir.

You will remember that I think Mr. McCullough reported that he had recommended that each mill set up a preventative maintenance program and assign a person in each department whose sole job would be preventative maintenance.

And it had been his despair that this recommendation of his which he thought would be helpful had not been adopted except in a very small number of instances. And for that reason I suggested that they report on whether they had such a set up or not.

Q. Well, who determined the status? Was the individual mill to report on their own status? A. This was covering a report that would be made on a chart form by each mill present at the meeting.

Q. Was the mill itself to determine what its status was or was there to be any consultation with the Research [3029] Corporation as to what its status was? A. No. They would report whether they had a maintenance man in their card room, for instance, full time or not.

Q. I see.

In the report on new improvements and machinery improvements which have been helpful and could be helpful to others—— A. Could I read those last two?

Q. Yes. A. Number 9: What has been done to improve local public relations; and number 10: What do you want from the Service Departments.

Then it says: This seems like a lot of information to cover in ten minutes, but from talking with Alan, I think it is going to be possible for us to get about 50 percent of

this information on to a chart which will make it possible to cover that amount in a very short time and leave the balance of the time for covering the other subjects.

(General Counsel's Exhibit No. N-26 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer what has been marked GC N-26, being a memorandum addressed to Mr. A. J. May from Mr. Roger Milliken dated December 17, 1955, with copies going to three of the mill treasurers.

[3030] Trial Examiner: GC N-26 is received in evidence.

(The document heretofore marked General Counsel's Exhibit No. N-26 was received in evidence.)

Q. (By Mr. Dyer) At that particular time, what was Mr. May's job? A. He was in charge of print cloth sales for Deering, Milliken and Company.

Q. All right.

Now, you state in the first paragraph that "every quarter from now on we are planning to hold a meeting of all of our mills at which each one of them will make a presentation to the group of what they have accomplished in the way of cost improvement, increased efficiencies, et cetera, during the previous three months."

By this memorandum you were inviting Mr. May to attend these meetings? A. The treasurers' meetings, yes, sir.

Q. In what capacity would he be attending those, sir?
A. As an observer.

I think it has been reported in answer to your question that we were—the mills with which I was connected were in a constant program of trying to improve their quality, and this was particularly so at the Monarch Mills which was buying premium cotton and had put in special equipment to make a premium 80 square.

[3031] Whenever I was in New York and discussing our sales problem with Mr. May, I would ask him what progress we were making on getting a premium for Monarch's 80 square, for Lockhart's 68 by 72, commensurate to the premium that the mill treasurers told me they felt it had earned by virtue of the improvements that they had built into its quality.

He told me at this time that he was having difficulty establishing the fact in the market that this was a premium —that these were premium 80 squares, premium 68 x 72, and in order to build up his confidence in what the mills for which Deering, Milliken was selling and for whom he was selling were doing in terms of improving their quality, I was anxious to have him sit in at these meetings where he firsthand could get a conviction and in turn I hoped could transfer or translate that conviction to his sales personnel and to the customers with whom he was talking so that we could achieve the goal that Deering, Milliken had of getting a premium 80 square for these mills that had hired Deering, Milliken to do this.

Trial Examiner: GC N-26 has been received, has it not?

Mr. Dyer: Yes, sir.

I offer GC N-27, being a memorandum addressed to various mill treasurers and managers from Mr. Milliken dated April 3, 1956.

Trial Examiner: GC N-27 is received.

[3032] (The document above referred to was marked General Counsel's Exhibit No. N-27 and received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, did you receive copies of the minutes of all the various meetings that were held on warp preparation and the other type meetings? A. I think as a matter of courtesy I did receive some. But I would not like to leave the impression that there were many of these meetings, because there were not.

And I think that this again is a meeting that resulted from that treasurers' meeting that was held at Gaffney to which we referred on Friday.

And I think that that was the only meeting that was held on warp preparation to which this letter specifically refers in 1955 or 1956.

Trial Examiner: I don't know that we have very much information. The question asked was whether the witness received all. He said some. And now apparently we are told this was the only one.

The Witness: This was the only one on warp preparation.

Trial Examiner: On warp preparation.

Well, wasn't that the question?

Mr. Dyer: My question was similar meetings where other things were discussed?

For instance, there were other meetings with regard to opening and picking and looms.

[3033] Trial Examiner: Are you speaking of treasurers' meetings?

Mr. Dyer: No, sir, I am not.

Q. (By Mr. Dyer) There were other meetings held besides treasurers' meetings with regard to various production problems at the mills, were there not? A. I think that we stated—or I stated that as I remember it, as a result of that one treasurers' meeting at Gaffney a meeting was set up in each of three different departments. Maybe four different departments. One on carding, one on spinning, one on warp preparation, and one on weaving.

To my knowledge, those are the—those meetings were the only ones, each of their kind, held in that period.

Q. Were there other meetings such as the preventive maintenance meetings where the mechanics attended, and minutes were taken of those? Did you receive those? A. No, sir.

Q. You state: ". . . and I am writing to say that I hope that each mill that sends a person to these central meetings asks that person to make a written recommendation when he returns as to what your particular mill should do as a result of what he has learned at this meeting."

As I read through this report, it is evident that a great many different things were being done at the different [3034] mills, and I am urging that the above procedure (if you are not already using it) be followed in order to be sure that we don't lose all of the advantages that we can get out of such a meeting." A. Mr. Dyer, in commenting on why I wrote that letter, I will say it has been my experience in

talking with men who primarily had visited mills where the mill did not sell through Deering, Milliken, that when they would come back they would tell me whenever I was talking to them about what they had seen about all the lousy things the other mills were doing and how much better they were than the mill they had visited. I felt this was not a way to get the most out of such a visit. And that if as a technique of getting good out of a visit or out of a meeting a person could be asked to make a recommendation of what he had learned, that that would benefit him; he couldn't say that he hadn't learned anything; and, therefore, by writing down what he had learned, his recommendation would be of value to his particular operation, and that man would not have wasted his time by going away and attending a meeting.

Q. In other words, you wanted positive thinking instead of negative thinking? A. That is correct.

(General Counsel's Exhibit No. N-28 was marked for identification.)

[3035] Mr. Dyer: Mr. Examiner, I now offer what has been marked GC N-28, being a memorandum addressed to various mill treasurers and managers from Mr. Milliken, with copies going to the Service and Research Corporation personnel, dated May 22, 1956.

Trial Examiner: GC N-28 is received.

(The document heretofore marked General Counsel's Exhibit No. N-28 was received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, in this you refer to a quality control program that Bill Sibley has been develop-

ing along with Harry Defore's department for Mr. Sibley's mills.

You state: "As I believe you know, Harry Defore has been concentrating a lot of his time at Monarch to help get this program developed and the bugs ironed out so that it will be possible for other mills to adopt it rapidly. I am going to ask Bill Sibley to arrange for a description of this quality control program at our next Treasurers' meeting, and I feel certain that all of you will be as enthusiastic about what it can do for us as you were about the Sterling Smith Cost System which Jack Fischer worked out at Gerrish Milliken."

What is the Quality Control Program you had reference to? A. The thing I had reference to here was called a pilot [3036] test line program wherein a mill would try to bring, say, ten percent of its equipment up to as perfect condition as possible, and then make a comparison with the results coming off of that equipment and the equipment of the rest of its mill. And if it seemed that there was a substantial improvement, they might then go on and do the same thing for all of their equipment.

This program, Mr. Sibley was trying to get it started in the Otteray Plant of the Monarch Mills. I know that this program did not get installed until this year, two years after this letter was written. It has not been adopted by any other mill that sells through Deering, Milliken and Company.

Q. Excuse me. I am a little bit confused.

You mean it was just put into Monarch effective as of 1958? A. Yes. In the Otteray Plant of Monarch and not any of the other three mills in the Monarch organization even yet.

Q. Is that because of the time required to set up this? A. I don't know what the reason was. But they either didn't have the personnel to handle it or felt that other things should take precedence over it.

All I know is that the Otteray Plant of Monarch is the only plant where this program is now today, in 1958, operating.

[3037] Q. At the time that you wrote this memorandum, did you have anticipations that it would get into effect much quicker than that? A. From what I had been told about it, I believed then, and believe now, that it has great benefit for a mill that is willing to adopt it and make it work.

Q. Well, did you anticipate that it could be put into effect at the other mills much more rapidly? A. I hoped that these experienced men who were the treasurers would share my enthu iasm for this idea.

Q. You go on to state: "To get such a program going in your mill will, of course, require personnel, and I am writing this letter at this time so that you may be laying the groundwork to see that you have personnel available to get such a program going, and beginning with the October meeting, Harry Defore will make a report on the progress that each mill has made in setting up a qualified program."

Mr. Defore, I take it, had nothing to report then at the October meeting? A. I think he made a report on what he believed, because he believed it strongly and still believes, what such a program could mean to a mill, which you will remember we were in a very tight market as far as college—as far as obtaining college trainees was concerned.

And whether that was the reason it wasn't adopted, or [3038] what it was, I don't know: but it is still at Otteray.

Mr. Updike: Is it clear that the Quality Control here being talked about is fiber quality control, as distinguished from fabric quality control?

The Witness: Well, it is control of quality of the stock at all processes of manufacture.

Mr. Updike: Yes.

The Witness: Whether fiber or silver or roving yarn, that is what we were talking about.

Mr. Updike: Is it clear the personnel involved relates to supervisory personnel in this last paragraph?

The Witness: Supervisory personnel and personnel that would be in a technical superintendent's division in that kind of a program.

Q. (By Mr. Dyer) Would the personnel required be mainly inspectors? Would that be the idea? A. No, sir. I am not too sure myself exactly how you go about doing this, except that Bill Sibley reported that he got, or had gotten—that he was getting set up at Otteray to do this, and that it required special personnel that could be concentrated on this particular project, and this required skilled personnel.

Q. Do you know whether any statement was made to that or what the requirements—whether the requirements for the [3039] personnel were related to Mr. Johnson at the Placement Department? A. I very much doubt it.

Q. You did receive the reports on the Demerit inspections being made at each mill, did you not? A. I received some information on that, yes, sir.

Q. I hand you a memorandum addressed to Mr. Oeland from you dated May 12, 1955.

In this you state "Congratulations on the very great improvement you have made between the first and second audit on roving frames." A. Yes, sir.

Q. So, you did receive the consolidated report that was put out by the Research Corporation and the improvement made—or on the demeriting inspection? A. Yes, sir.

Mr. Updike: Well, I don't know whether "consolidated" is the right adjective. I don't remember the testimony. Maybe it was.

Q. (By Mr. Dyer) It is the report concerning all the mills; isn't that right? A. On which the information—well, yes, sir, it is.

Trial Examiner: Do we have that in evidence?

Mr. Dyer: I believe we have some of those in evidence, yes, sir, from the Research Corporation. This one is on [3040] roving frames.

The Witness: Well, it wouldn't be from all the mills. If it was on roving, it would be as to roving.

Mr. Dyer: It would be for the mills which had those particular frames?

The Witness: That is right, yes, sir.

Q. (By Mr. Dyer) These are the demeriting inspections which were being made by the Research Corporation? A. That is right.

Q. And the reports that they put out? A. That is right.

(General Counsel's Exhibit No. N-29 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer what has been marked GC N-29, being a memorandum addressed to Mr. Oeland from Mr. Milliken dated November 10, 1955.

Trial Examiner: GC N-29 is received in evidence.

(The document heretofore marked General Counsel's Exhibit No. N-29 was received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, this memorandum has to do with the safety contest figures for the last six months. You received a report on those; is that right? A. Yes, sir. I received a copy of the letter that—who was this?—Liberty Mutual?

Mr. Updike: Liberty Mutual, yes.

[3041] The Witness: —that Liberty Mutual prepared for their awarding of their prize for that mill in the so-called Deering, Milliken group which did the best job in one of three categories that they had established.

Q. (By Mr. Dyer) That is the safety contest that is referred to? A. That Liberty Mutual set up, yes, sir.

Q. And the information which Liberty Mutual received for that award was information on lost time accidents which the insurance department got up initially: is that right? A. No. I think this is something that I think Liberty Mutual handled directly with the mills.

Q. In other words, you mean the mills submitted their accident record directly to Liberty Mutual? A. That is my understanding. I think Liberty Mutual had to make the adjustments, did they not?

Q. Now, you tell Mr. Oeland that "I was looking over the safety contest figures for the last six months and was disappointed in Darlington's showing with 18 lost time

accidents. Actually this amounts to over 25 percent of all the lost time accidents in the Deering Milliken group.

"It makes me wonder whether you have a sufficiently well organized safety campaign, and if not, I hope that with your new setup you will have an opportunity to do this so that you may be among the leaders in the future."

[3042] What was the new setup you refer to? A. I can't remember.

Q. All right.

Mr. Updike: Can we dispose of that now by my asking him a question?

Mr. Dyer: Go ahead.

Mr. Updike: Wasn't this the time when Mr. Mullendore left and Mr. Hawkins or somebody else came in?

The Witness: I just don't know.

Trial Examiner: You haven't disposed of it.

Mr. Updike: I thought maybe I could.

Q. (By Mr. Dyer) Did you receive a reply from Mr. Oeland with regard to this memorandum? A. Mr. Dyer, I don't know.

(General Counsel's Exhibit No. N-30 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer what has been marked GC N-30, being a memorandum from Mr. Milliken to various mill treasurers and managers dated May 16, 1955.

Trial Examiner: GC N-30 is received.

(The document heretofore marked General Counsel's Exhibit No. N-30 was received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, this memorandum is in regard to Monarch Mills becoming the first cotton mill in the Deering, Milliken organization to have all their weave rooms running [3043] at 72 percent relative humidity.

Was there a program to reduce the relative humidity at all mills? A. Mr. Dyer, I had learned from asking questions of the Draper Corporation as to which they considered to be the best run weave room in the cotton print cloth business. In answer to that question, they had told me that they thought that the Mayfair Mill in Spartanburg was.

I had visited the Mayfair Mills in Spartanburg with Mr. Norton and had found that they operated their weave room with a relative humidity of 72 percent. Most mills in the textile industry operate somewhere between 84 and 90. The Mayfair Mill organization credited their operating at a low humidity with much of the—as being the reason why they had high efficiences, low breakages, et cetera.

As a result of that, I had, or Mr. Norton had commented on that at one of the Treasurers' meetings.

I can remember that when we had a meeting at Gainesville, that has been referred to earlier, that the weaver there reported that he had gotten his efficiencies—that he had gotten his humidity down to 74 percent. I was delighted when Louis Ellis, who is the superintendent of the Monarch Mills of Monarch, reported that he had gotten it down to 72 per cent.

I am sorry to report that it is back up to 80 at the [3044] present time as far as I understand.

Q. Well, after discussing this at Treasurers' meetings, did the rest of the mill treasurers agree to try to lower their relative humidity? A. They were all against sin. Some of them worked to get their humidity down; others did not.

Q. Do you recall how many did not? A. I think that Monarch was the only one that got to 72 percent.

Q. Did all of the rest of them attempt to lower the relative humidity in the weave rooms? A. I would say that fifty percent of them made an improvement of four or five points, bringing their average down from 85 to 81.

Q. You say they made an improvement. The other fifty percent, did they try to make an improvement, whether they did or not? A. That I don't know. All I knew was what they subsequently reported they had done.

Q. Mr. Milliken, you also discussed with the various mill treasurers other problems that arose. For example, this: there was a question raised by you of the finishing company, whether the cloth should be folded, whether it should be in yard or yard and a half folds.

Do you recall taking up that question with the treasurers? [3045] A. I don't remember taking it up with the treasurers. I remember taking it up with certain mills that had a problem in connection with the acceptance or non-acceptance of such a fold by one or two finishing plants.

Q. Do you recall what was done in regard to the problem. A. I can't. As I remember it, we had a running argument with two finishing plants as to whether they would accept the larger bales involved in a one and a half yard fold, I think it was, as against a one yard fold.

And this presented a problem, because about six finishing plants were requesting of the Deering, Milliken and Company sales organization that they try to persuade their mills to set up the larger fold because it made for easier handling in their finishing plant.

And I think it was a problem in the finishing plant where the plant itself used mechanized equipment for handling bales when they were received or whether they used hand

dollis. Because the mill only wanted to put up one type of fold, this presented a problem.

And I think Darlington specifically asked the sales organization to do what they could to get the two recalcitrant finishing plants that wanted the older method—to get them to agree that it would be all right to accept a new one.

Q. Was the sales organization unable to do so? A. I just don't remember how it finally came out. I [3046] haven't heard anything about it recently.

(General Counsel's Exhibit No. N-31 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer in evidence what has been marked GC N-31, being a memorandum addressed to Mr. Newton from Mr. Milliken dated January 14, 1955, with copies going to various mill treasurers.

Trial Examiner: GC N-31 is received.

(The document heretofore marked General Counsel's Exhibit No. N-31 was received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, this memorandum is in regard to the idea of Mr. Roy Rochester. Was he a mechanic at one of the mills? A. I think he was on the supervisory payroll of Abbeville in charge of preventive maintenance.

Q. Apparently he came up with an idea which might be patentable. By this memorandum you state "I want to ask whether all mills have now adopted the policy of having all of their supervision sign a patent agreement with the company. This was put in the works some time ago, but I have not heard whether it was brought to a conclusion, and

I think it is in order to check and see whether the mills are following this procedure and are getting such agreements from all new personnel coming into management ranks."

"Could you please check with all of the mill treasurers [3047] on this for me."

Q. Did you hear from Mr. Newton in regard to this memorandum? A. Yes, sir.

To give a little background on this: One of the departments in the Research Corporation is a patent department headed by Doctor Norman Armitage. At a treasurers' meeting, the treasurers decided that they wanted to have their supervisory personnel sign a form which is customary in industry today.

They asked Mr. Newton—I don't believe Doctor Armitage was present—to have Doctor Armitage prepare the standard type of form which was used in industry covering this type of thing and forward it to the mills.

I also think that several of the treasurers asked Doctor Armitage to visit at their plants and explain to the overseers what this agreement meant and tell them something about the fact that it was customary in industry to do this nowadays with the accelerated rate of improvements that were being expected of them in supervisory positions.

You asked me if I heard from Mr. Newton about this?

Trial Examiner: Who did you say asked Newton to have Armitage prepare the form?

The Witness: The treasurers.

Trial Examiner: All right.

The Witness: You asked me if I heard from Mr. Newton [3048] about this.

I do remember hearing from him. And I do remember his reporting that there were one or two mill treasurers that felt that they had particular situations whereby they did not feel that it would be intelligent for them to ask their supervisors to sign such an agreement. And they had decided not to do it.

Q. (By Mr. Dyer) But all of the other plants had various supervisory officials sign this type of agreement? A. Those were the only two mills that he reported to me had a specific reason why they felt this was not a right thing for them to do.

Q. All right. A. Whether the others went ahead or not I don't know.

Trial Examiner: With whom was such an agreement—well, were such agreements signed in fact?

The Witness: Yes, sir.

And to answer your question: The agreement would be between the Darlington Manufacturing Company and the supervisory personnel of the Darlington Manufacturing Company.

Q. (By Mr. Dyer) I see that there is a notation on this memorandum signed by "FPM", which would be Mr. Mullendore; is that correct? A. I guess that is right.

Q. It states "All present overseers and shop men have signed the agreement." [3049] A. That is correct.

Q. The shop men would not necessarily be supervisory officials, would they? A. I guess maybe I was incorrect in describing them. Apparently it is customary to have shop men who were working on shop improvements maybe to do that.

Trial Examiner: Well, now, again referring to this handwritten notation, the reference is to "the agreement".

The Witness: A standard form of agreement used by all industries.

Trial Examiner: All right.

It was still between the mill and the employee.

The Witness: The Darlington Manufacturing Company and the employees of the Darlington Manufacturing Company, as I understand it.

Q. (By Mr. Dyer) Do you know whether the Research Corporation had such agreements among their people in the Research Corporation? A. I am sure they did.

(General Counsel's Exhibit No. N-32 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer what has been marked GC N-32, being a memorandum addressed to various mill treasurers from Mr. Milliken dated February 22, 1955.

Trial Examiner: GC N-32 is received.

[3050] (The document heretofore marked General Counsel's Exhibit No. N-32 was received in evidence.)

Q. (By Mr. Dyer) Now, in this you state: "Doctor Armitage has received a letter from Basil Hill who is now associated with the Mooresville Mills. Hill was very interested in finding out whether they could become a licensee under the Research Corporation to use the slub inserter which we have had available for some time. He believes that apparently it holds terrific promises for Mooresville."

Did Doctor Armitage get in touch with you after he had gotten this letter from Mr. Hill? A. Yes, sir.

Q. What was the conversation between you and Doctor Armitage? A. I can't remember it.

Q. Can you give us the substance of it? A. No, sir, except to say that what it says here that Basil Hill had asked if the Mooresville Mill could take a license on it, and I probably asked him were any of the mills who were owners of the Research Corporation using this device that their coporation had invented. And I think he told me none of them were. Which raised the question in my mind as to whether I ought to write this letter and point out that the Burlington Mills Corporation, of which Mooresville is a part, thought that this had value, and maybe they should [3051] re-examine whether it might have value to them.

Q. (By Mr. Dyer) Did Doctor Armitage ask you whether or not they should license Mooresville for this? A. I don't remember that coming up. I think we did license them. As I remember now, we were very anxious to license this and had had several discussions with either the du Pont Company or the American Enka Company relative to whether they could use this device to put a slub into continuous filament rayon yarns.

(General Counsel's Exhibit No. N-33 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer a memorandum marked as GC N-33, being a memorandum from Mr. Milliken to various mill treasurers and managers dated February 24, 1955.

Trial Examiner: GC N-33 is received.

(The document heretofore marked General Counsel's Exhibit No. N-33 was received in evidence.)

Q. (By Mr. Dyer) Now, in this memorandum you are talking about the problem of water conservation.

You state: ". . . and in talking with Russell Bush"—Russell Bush at that time was with the Engineering Department at Deering, Milliken Service Corporation; is that correct? A. That is correct.

Q. ". . . in talking with Russell Bush the other day I asked [3052] him if he would talk with each of you"—meaning either the mill treasurers or managers—"as to ways and means of getting our consumption of water measured so that it will be possible for each of you to work towards the reduction of your use of water.

"I am writing this letter to ask you to please give some serious thought as to how you can measure your consumption and activate a program to reduce your consumption of water much as we now have programs to reduce our production of waste."

Did you get any reply from any of these people with regard to this memorandum? A. No, sir. I don't think this called for a reply.

Q. All right.

Was a program set up to reduce the consumption of water? A. I don't know whether there was or not. I do remember that prior to this time the Excelsior Mills at Union had had a serious situation where there was a shortage of water. And because it meant shutting them down, they had actively investigated how they might cut down on their consumption, with the startling result that they were able

to it by fifty percent by merely adopting careful procedures; not letting big valves run, et cetera, et cetera.

And I thought that I would write this letter to call [3053] this whole problem to the attention of the men to whom it was addressed with the idea that they might be thinking about it.

Q. Do you recall whether you received a report from Mr. Bush on what he did in regard to this? A. No, sir, I did not.

* * *

Trial Examiner: GC N-34 is received.

* * *

Q. (By Mr. Dyer) Mr. Milliken, you start out in the first paragraph: "I was delighted to receive your recommendations on Friday as to your thinking on the best way to set up the operation so that it would be possible for us to have an independent agency to recommend the qualities desired in our cotton and to check to see that the cotton purchased lived up to the requirements as decided upon by the mill treasurer."

What was to be this independent agency? A. This refers to a conversation that Mr. Marshall Stone [3054] and I had with Mr. Truluck on the subject of whether Harry Defore, who had been originally hired by Mr. Truluck, would report to him or would report independently of Mr. Truluck.

Q. You mean as a separate department under the Cotton Department? A. As a separate department from the Cotton Department.

Q. I see.

And what was decided? A. Well, Mr. Truluck originally hired Harry Defore to bring to the Cotton Purchasing Department the latest techniques of scientifically evalu-

ating cotton. Several of the treasurers—in fact, each of the treasurers, in turn, in discussions I had with them from time to time, made the point that they thought that Harry Defore had learned so much about evaluating cotton scientifically that it would be desirable for the Service Corporation to be set on a basis of checks and balances wherein Harry Defore with his techniques could scientifically check the cotton that Mr. Truluck was buying and that the only practical way to make such a setup work would be for Harry Defore to be independent of Mr. Truluck and not reporting to him, because it put him in a very embarrassing situation if his reports showed something unfavorable about a type of cotton in that he would be reporting on cotton that had been purchased for an individual mill by Mr. Truluck. He would be checking up on his boss.

[3055] And the mill treasurers—we all had a meeting to discuss this particular thing, just the three or four mill treasurers involved in buying cotton. And they felt that this was the way they would like to see it set up. And Marshall Stone discussed it, with me present, with Mr. Truluck on that—discussed it at that time.

Q. Were there two different meetings, then, that you refer to? A. No, sir.

Oh, yes, there were.

Q. Now, you state in the second paragraph: "I just received your letter covering that which we discussed on Friday. There is just one thing in this letter which was not covered and which we discussed and which I wanted to be sure was understood, and that is that as we visualize it, it would be the function and responsibility of Harry Defore's group, working closely with you, to set up the requirements and control limits of each qualification that he believes will make for the best quality and the most efficient cost for

the particular yarn a mill is making; that he will present these recommendations to the mill treasurer who will have to weigh how near it is practical to live up to these requirements taking into consideration the possible additional costs you would have to pay to get them."

In other words, this is an attempt to define the limits [3056] of responsibility; is that right? A. Well, what had happened in the past would be that a mill would receive against its purchases some cotton that, let us say, didn't run as well as the previous lots of cotton had run. When the mill would report that to the Cotton Purchasing Department, Harry Defore, I think, would—Harry Defore had said "Well, I could have told you that if you had asked me, because my tests showed that this had more cotton that was a higher percentage of cotton with short fibers in it" and so on.

And what Marshall Stone had told Mr. Truluck the previous day was that he wanted to say to Harry Defore as a matter of procedure, "Look, Harry, you tell me what you think I should set up as the specifications for the cotton for my particular yarn for which I am going to be placing an order with Mr. Truluck. Then I will decide whether that is practical from my knowledge of cotton. And then I will ask Mr. Truluck to buy against it."

And the purpose of this letter was to be sure that there was no—to be sure that that was clearly understood; that that was the way this situation that the treasurers wanted would work out in practice.

Q. Then in the fourth paragraph you talk about "Following that, it would be the plan to set up a recheck wherein some kind of sampling arrangement would be made for the mill to [3057] send Harry Defore's department sufficient samples for analyses so that he could see how the cotton delivered compared with the qualities purchased."

I believe that is something we have already covered. Is this the recheck department as it was called in 1956? A. No, sir.

Q. What is it? A. The recheck department was on cloth.

Q. Is this the fiber quality control and research department as set up? A. Yes.

The paragraph before that says "It would then be the function of the treasurer to advise you what he wanted purchased, which orders you would then proceed to execute for him."

Q. Then the next paragraph after that: "I was delighted that you and Harry plan to use all laboratories that will be involved in this operation jointly so that this new set up will involve a minimum of additional cost." A. You could see that this was a very ticklish situation where a man who had previously been working for another man was being made independent. And Mr. Stone and I believed that the best way to have such a new situation work would be to write everything down on a piece of paper as to what was understood so there would be no questions when it got into operation.

[3058] Trial Examiner: Were there no questions when it got into operation?

The Witness: It went very smoothly.

* * *

Mr. Dyer: Mr. Examiner, I now offer in evidence what has been marked GC N-35, being a letter addressed to Mr. Milliken from Mr. Oeland, dated May 9, 1955.

Trial Examiner: GC N-35 is received.

(The document heretofore marked General Counsel's Exhibit No. N-35 was received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, I note some handwritten notations at the top of the letter. Is that your note? A. That is my handwriting, yes, sir.

Q. It says "J. M. Oeland, Please come to Treasurers' meeting prepared to make recommendations on whether additional lab (if any) could be located as far as Darlington is concerned." Did you send such a letter to Mr. Oeland? A. Yes, sir. May I just read this?

Q. Sure. A. Yes, sir.

Q. Did you write a memorandum to Mr. Oeland with regard to this note you made at the top of the page? A. No. I sent him this.

[3059] Q. You sent this back to him? A. Yes, sir.

Q. Now, in the first paragraph Mr. Oeland states: "I have given some thought to your suggestion that we write you about our recommendations for purchases of cotton this fall."

Had you written to the various mill treasurers asking about their recommendations for the purchases of cotton? A. I guess I had, yes, sir.

Q. And Mr. Oeland goes on and finishes up: "As stated at the beginning of this letter, I do not feel that I have any helpful suggestions, but felt I would like to follow up on your suggestion that we write you our opinion with regard to this matter," A. Mr. Dyer, I think that that letter had reference to a problem that was constantly confronting the directors of the different mill corporations at or about this time, namely, what position would they take as to the length

of the cotton, how much cotton they would buy; because, as may have been testified to earlier, we, through Harry Defore's program and thinking, had come—that is, the mill treasurers had come to believe that the best way to insure even running qualities, even quality of work throughout the entire year rather than having ups and downs, or having the mill blow up, as they described it, it was desirable to [3060] select the cotton as it came onto the market according to the characteristic it had. And this involved tying up for a mill a great deal of its money, and was a problem that properly was the responsibility of the directors of the mill. And it was in that connection that I wrote and asked Mr. Oeland to give me his recommendations as to what his thinking was about the cotton that would start to come on the market a couple of months later.

Q. Well, did you write to the other treasurers as well as Mr. Oeland? A. I believe I did, yes, sir.

* * *

[3062] Trial Examiner: GC N-38 is received.

* * *

Q. (By Mr. Dyer) Can you tell us, Mr. Milliken, what the tests were that Sterling Smith reported on? A. Yes, sir.

The basic objective was that the—in trying to set up a premium quality 80 square primarily, Monarch, Bill Sibley, felt that it was important to find out if possible which of those characteristics that were measurable in the greige unfinished cloth were meaningful and significant when that greige cloth was finished at a bleachery; because he believed, as I remember it, that it would be foolish to try to

build into the cloth a characteristic that was meaningless; because, after all, while we sold greige cloth, the ultimate consumer bought finished goods.

And the tset that Sterling Smith was responsible for following was to try to evaluate in the greige cloth of Monarch and Darlington and cloth from Borden, Durst and Alice, the three mills who had a reputation for making a premium 80 square in the market.

How they came up into a greige evaluation and how the same cloth looked after it had been finished the same way by [3063] one finishing plant, Cranston, which was considered to be one of the best in the industry, was a consideration in the test.

* * * *

Q. (By Mr. Dyer) Mr. Milliken, I take it that this was a suggestion of yours to the mills so that they might consider using a same or similar type sign on the various machinery, bringing to the employees' attention what a machine does cost and what it would cost to replace it? A. Following up on a suggestion made by somebody reporting to Business Week Magazine.

Q. I take it that this called for no reply from the mills? [3064] A. No, sir.

And I think that Abbeville Mills followed this idea in their spinning room; but I am not aware that any other mill did adopt it.

* * *

[3069] Trial Examiner: GC N-43 and N-44 are received.

(The documents heretofore marked General Counsel's Exhibits No. N-43 and N-44 were received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, you start off by saying, "In attending mill meetings in recent months, I have been tremendously impressed with the development jobs that have been performed by either the technical service departments or the plant engineers that were originally placed out on loan by the Research Corporation to the mills.

"Now that we have so many new areas of study which we want to investigate in our manufacturing operations, I am writing to ask you whether you couldn't find very good use [3070] in your organization for a trained engineer provided they could be located by the Research Corporation. It seems to me that in almost every instance where we have had such an engineer working, they have many times paid for their salary or they have been incorporated into the actual management of your operation with very desirable results.

"Could I please have your comments on this?"

When you talk about attending the mill meetings, you mean what we have referred to earlier as these mill achievement meetings? A. Those four or five meetings that were mentioned, yes, sir.

Q. Did you receive replies from the various mills in regard to your suggestion? A. I think I did receive the replies from some mills, yes, sir.

Q. And is the letter of Mr. Oeland, GC N-44, a reply to this memorandum of yours? A. Yes, sir. I did get this reply.

Q. Did you receive similar replies from other mill treasurers? A. I think I probably got a few, yes, sir.

Q. When you say "a few", how many would a few be? I think you have about ten—well, I think you have about twenty people listed on the initial page of your memorandum. [3071] A. I wrote so many letters like this that I

guess the treasurers became inured to receiving them. And I didn't generally get much more than fifty percent reply to a letter of this kind.

Q. You got about a fifty percent reply, then? A. I would think to this letter I got about a fifty percent reply.

Q. Where you were real eager to get the information, would you follow it up with another letter? A. I have said that on occasions I have followed up, and it generally took two or three letters to get answers from all to whom the original letter had been addressed.

* * *

[3072] Q. (By Mr. Dyer) Mr. Milliken, this memorandum, the first [3073] paragraph has reference to this: "Recently Tom Watson of Judson made a talk before the Maintenance Engineers at a convention in Chicago and because of questions directed to him from the floor after his talk, disclosed a great deal of what we are doing on machinery maintenance which subsequently got printed in one of the textile magazines."

How did this come to your attention? A. A treasurer called me up and pointed out to me. He said he thought it was rather foolish.

Q. And then you wrote this memorandum? A. Yes, sir.

Q. It states: "This release of information can only help our competitors and therefore hurt us, and I am writing this letter to say that we should and must adopt a policy whereby we close up any possibility of information on things that we are doing getting to our competitors either at a technical meeting or by articles in the trade journals."

Is Mr. Watson an engineer at Judson? A. Yes, sir.

Q. And do the engineers of the various mills sometimes go to outside organizations and make talks? A. He was the only one that ever did as far as I know.

Q. All right.

Mr. Dyer: I offer what has been marked GC N-46, being a memorandum addressed to various treasurers and managers from [3074] Mr. Roger Milliken dated September 15, 1955.

Trial Examiner: GC N-46 is received.

(The document above referred to was marked General Counsel Exh. N-46 and received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, this memorandum states: "I am very anxious to make a spot check on the total number of people who are on your payroll the week ending September 17th, and then another figure as to how many people got less than 40 hours of work. If you do have a breakdown on this figure as to why they got less than 40 hours, I would appreciate your working this into the statistics."

Can you tell us what the purpose of this memorandum was? A. Yes, sir.

Somebody at a competitive mill with whom I had been talking had told me that they felt that it had been very helpful in their mill to them when they worked on the—when they worked toward the end of seeing that everyone who was on the payroll got 40 hours of work if the mill were running on a schedule of 40 or 48 hours.

It had been their experience that when persons who were on the payroll were not getting forty hours of work, that it was destructive of enthusiam and morale. And I was

anxious to find out in the mills with which I was connected what the story was.

[3075] Q. And did you get a breakdown from the various mills showing the reasons why the people worked less than forty hours? A. I did.

Q. Was the results of all the mills tabulated for you? A. My secretary put them together on a sheet of paper, yes, sir.

Q. What did you do with the information after you got it? A. I studied it.

Q. What did you do after you studied it? A. My study showed that where a mill had what was known as a large number of spare hands, that apparently in an effort to give those spare hands some work, they had asked the regular personnel on their payroll to not come in on a certain day or not report, or had sent them home. And that was the reason—where a number showed up as working under forty hours, that was the main reason for it.

Q. I think we have had reference before to a plan like the "Day of Rest Program". A. Yes, sir.

Q. Is that what you are talking about? A. Well, one mill in particular, the New Holland Plant of the Pacolet Manufacturing Company, had instituted a day of rest program, because many of the women, as I understand it, in the mill had asked Mr. Baker who was then the manager if they could not plan to work five days instead of six days, [3076] which was the mill's schedule at the time this schedule was started. And that was what the day of rest program was.

Q. It did not have any connection with the results of this? A. Well, it would have had if the New Holland Plant had been working on—had reduced its hours of operations normally from forty-eight to forty, as it has

since had to do, because that would have meant to give the same number of people employment, some employment during the week, the regular personnel would have had to work less than forty hours.

Q. After finding out that a number of the mills did have a number of spare hands who were being allowed to work this extra time, did you talk about this problem with the mill treasurers? A. I did discuss it personally with some of them, yes.

Q. Those that had the problem; is that the idea? A. If I remembered it when I saw them, yes, sir.

Q. Was anything decided on whether to continue that practice or not? A. That was, as in all these matters, something that was left entirely up to the treasurer as to what he would do about it. And I don't know what they did.

Q. Would there have been any monetary benefit to the cutoff—that is, would there have been any monetary benefit to cutting out the excess number of people working, or cutting [3077] down on the excess number of people working so that you could build them all up to forty hours? A. No, sir.

(General Counsel's Exhibit No. GC N-47 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer a memorandum from Mr. Milliken to various mill treasurers and managers dated September 23, 1955.

Trial Examiner: GC N-47 is received.

(The document heretofore marked General Counsel's Exhibit No. N-47 was received in evidence.)

Q. (By Mr. Dyer) Very briefly, Mr. Milliken, this concerns whether a mill should allow payroll deductions for Community Chest; is that right? A. That is correct.

Q. And you state in here: "This matter has been discussed several times and it was decided that it would be policy not to permit payroll deductions of any kind because of conviction that it is the right of the employee to do what he wishes with his money and that too much pressure can be brought to bear by overseers, second hands, and others when plant wide campaigns are on."

(General Counsel's Exhibit No. N-48 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer as GC N-48 a [3078] memorandum to some mill treasurers from Mr. Milliken dated December 10, 1955.

Trial Examiner: GC N-48 is received.

(The document heretofore marked General Counsel's Exhibit N-48 was received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, this is in regard to requests for capital expenditure for shop equipment; is that right? A. Yes, sir.

Q. And in here you state that you have been reviewing the capital expenditure requisitions that have been coming in for new machine shop equipment which are all listed without showing any return on the investment.

You say "I think it would be wrong to approve these requests for shop equipment unless we prove that we can make money out of the expenditure. As I see it, we have been prodded by Frank Rowe and the machinery maintenance program to improve our machine shops, and it is

probably true that an improvement is necessary, but certainly it ought to be possible to show what benefit we could get out of such purchases.

"Therefore, before okaying any purchases for new machine shop equipment, I think you ought to review your request for same and have your plant engineer or master mechanic prove to you how he can get a return out of this [3079] investment—whether the return comes out of quality, which should be translatable into savings, or from whatever source."

Thereafter, when requests came in for machine shop equipment, did the requests for capital expenditures show a proposed saving? A. No, sir.

I think that it was concluded that it was impossible to translate improvements in qualities of machinery, repair parts made, on any logical engineering basis into a specific dollar amount.

Q. Into any dollars and cents amount? A. Yes.

And that while this was a desirable thing, that practically it wasn't feasible.

Q. Would the request for capital expenditure thereafter—— A. It might have "Quality improvement" on it.

Q. As to what particular quality improvement was planned through the use of the machines or just generally quality improvement? A. It might generally say the reason was "quality improvement".

Q. I see.

(General Counsel's Exhibit No. N-49 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer GC-N-49, being a [3080] memorandum addressed to Messrs.

R. L. Collett, E. F. Flanigan and C. W. Kable, Jr. from Roger Milliken dated December 12, 1955.

Trial Examiner: GC N-49 is received.

(The document heretofore marked General Counsel's Exhibit No. N-49 was received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, in the first paragraph you state: "It has come to my attention that in one recent instance one of the mills was securing less for depreciation on certain items than it is possible for us to do under the regulations."

Mr. Schoemer: "Was accruing".

Mr. Dyer: Yes.

Q. (By Mr. Dyer) Can you tell us how that came to your attention? A. No, I can't remember.

Q. All right.

"Because getting the maximum depreciation charge is of enormous importance to our business, if we are to provide the funds to keep modernized, I am writing this letter to ask you as a committee of three, with Charlie Kable as chairman, to make an immediate study of our situation in all mills with the objective of setting up procedures that will insure the attainment of the following objectives:

"1. That we get as charge-offs against current [3081] expenses all these items that can be so charged.

"2. That we set up the maximum depreciation possible on each item purchased.

"As it is now, each mill shows a different procedure on this and it is my hope that as a result of your joint study, it will be possible to work out a uniform procedure that will accomplish the above goals.

"I am sending a copy of this letter to all of the treasurers so they may know of this program and will be prepared to discuss this with you as your study proceeds."

Can you tell us what happened after this committee was set up? A. I think that as a result of this the whole matter, Mr. Dyer—Mr. Kable finally had a conference with the head of the Engineering Division of the Treasury Department that handles depreciation for the textile industry with a view to clarifying what maximum amounts of depreciation were permitted by the Treasury Department under the tax law as it had been revised to change the method of computing depreciation by all industry.

Q. Well, following his talk with the Treasury Department, what happened then? A. Well, the Treasury Department prepared a listing of how they would rule that certain items would be classified. As to the years of life on certain general broad areas of textile equipment I am speaking of.

[3082] Q. All right. What did Mr. Kable do with that? A. He made copies of it and made it available to the individual mills.

Q. In other words, this outline as set up by the Treasury Department showed what can be charged off as expenses? A. It showed the rate—as I remember it, it put all different kinds of textile machinery into certain classifications and said on classification "B" certain machinery fell in this classification, and on that they would decree that there would be a 12-year life permitted with a one and one-half residual remaining life at the end of the period, or something like that.

Q. That would be as to capital items; is that right? A. That is right.

Q. What about your point number 1? "That we get as charge-offs against current expenses all those items that can be so charged."

What did Mr. Kable do in regard to that? A. I think he also discussed that with the Treasury Department so that he could get a clarification on what items could be considered under the law as being permissible to be charged off, and hence under the general nature of repairs, and those items that while repairs to the machinery would be considered by the Treasury Department to be of a capital nature and that doing this would—getting this clarified [3083] would mean that there would be a lot of fuss and furor saved when the Treasury Department reviewed a statement of a mill at the end of two or three years and it would eliminate the need for the mill to pay back interests if any were determined to be due as a result of having improperly classified certain items.

Q. Was the information put on as one of the standard practice instructions? A. I don't know. I don't know what you mean by "standard practice instructions."

Q. There has been one already put in evidence. I think this is another one handed to me by Mr. Updike or Mr. Schoemer, called Comptrollers Division, Standard Practice Instruction. A. Yes, sir, I think this has to do with——

Trial Examiner: Well, no——

The Witness: This is a standard practice instruction inside Deering, Milliken and Company.

Is that the question.

Q. (By Mr. Dyer) It goes to all the mills, as I understand it. A. I understand this was standard practice as to what the personnel of Deering, Milliken and Company

would do about recognizing certain signatures on their books; whether they were to honor them or not.

[3084] Q. My question was: Whether under the general title of "Standard Practice Instructions", whether the information gathered by Mr. Kable would be put on a form similar to this. A. I don't think so, no, sir. Because that had to do solely with Deering, Milliken and Company.

(General Counsel's Exhibit N-50 was marked for identification.)

Mr. Dyer: I now offer what has been marked GC N-50, being a memorandum addressed to Mr. J. J. Norton from Mr. Roger Milliken, with copies going to some men at the Service Corporation and to some mill treasurers.

Trial Examiner: GC N-50 is received.

(The document heretofore marked General Counsel's Exhibit No. N-50 was received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, this discusses a let-off motion for model E looms which Colonel Springs had probably worked up; is that right? A. He told me he had set up his own foundry for all of his mills, and that they were making these new let-off motions in that foundry which he thought were doing him a lot of good.

Q. All right.

You were asking Mr. Norton to do what? A. To check and see if the idea of a let-off motion on the model E looms that he had at Gaffney could show a return on the investment to him.

[3085] Q. Well, did you also ask him to check on Mr. Springs' let-off motion? A. Yes, sir.

Q. And to pass on anything he found of interest to the other mills? A. I did.

(General Counsel's Exhibit No. N-51 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer a memorandum dated December 21, 1955, from Mr. Milliken to various mill treasurers and managers.

Trial Examiner: GC N-51 is received.

(The document heretofore marked General Counsel's Exhibit No. N-51 was received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, in this memorandum, you are telling the mill treasurers or managers that after visiting several competitive mills you find that they are behind the DM Mills in the matter of spinning speeds; is that right? A. Yes, sir.

Q. And you state: "I think in this field we have an advantage over our competition that means a lot, and I am writing this letter to suggest that we keep this information as to what we are doing on our speeds as quiet as possible. May I suggest that whenever we have visitors from other mills [3086] going through that we do our best to keep off this subject of spinning speeds."

Do you know whether any information on spinning speeds was thereafter given out? A. I am sure it was.

Q. As to what the speed was or just general information on it? A. I am sure it was given out specifically.

Q. To competitors? A. Yes, sir.

Q. How long afterwards? A. I can't answer that, Mr. Dyer.

* * *

[3087] Q. (By Mr. Dyer) Mr. Milliken, what was this program that [3088] Mr. Hal Byrd set up? A. He said that he would try to get his buyers working for him to find out what was going on in competitive mills.

Q. And in bulletining this information to the members of the organization, meaning the DM Mills? A. The owners of the Deering, Milliken Service Corporation, yes, sir.

* * *

Q. (By Mr. Dyer) In the second paragraph you state: "Several of the mill managers have expressed enthusiasm for getting information this way, and I am writing to you to ask that you please plan to do something similar. One of the big problems of an organization like ours is that [3089] of getting as much information as possible and communicating it to all interested parties. Each of you is in contact with individual mills in our group and with other mills, and if you could please make a note to at least once a month write to all of the mills giving them any information that you have picked up either in our own mills or elsewhere that you think would be helpful to them, it would be extremely helpful to all.

"Could you please see that I get copies of these letters, as I am very anxious to follow new developments."

What happened to this program, Mr. Milliken? A. Mr. Dyer, I got, I think, approximately three letters of this kind from Mr. Byrd, and not a single letter of this kind from any of the other five men who are listed on here.

Q. Did any of the mills pick up this idea? A. What idea?

Q. Of passing around information which they picked up from other mills? A. No, sir.

* * *

[3090] Trial Examiner: General Counsel's Exhibit Number N-53 is received.

(The document heretofore marked General Counsel's Exhibit No. N-53 was received in evidence.)

* * *

[3092] Q. (By Mr. Dyer) Now, in visiting various competitive mills, did you, after returning, always write a memorandum somewhat like this? A. No, sir.

Q. For circulation to the mills? A. No, sir.

Q. If you were with somebody else, did they on occasion do [3093] it? A. Yes, sir, on occasion.

Q. Well, was there ever a time when either you by yourself or with somebody went to a mill that you did not circulate a memorandum telling what improvements you saw? A. Yes, sir.

Q. And would that be an occasion where you didn't see any improvements that you thought the DM Mills could use? A. It could have been for a number of reasons.

Q. All right. Was it regular practice——

Trial Examiner: Well, when you noted improvements, you passed that information on, did you not?

The Witness: Yes, sir.

Trial Examiner: All right.

Q. (By Mr. Dyer) Was it also regular practice for the mill treasurers or managers of visiting outside mills to write up a memorandum and pass it along to the other mills? A. If they thought something would be of interest to me or somebody else, they did write it, yes, sir.

Trial Examiner: That would be distributed to whom?

Q. (By Mr. Dyer) Would it be distributed to all the mills? A. I think it was, yes, sir.

Mr. Updike: When we say "all mills", we are talking about cotton mills, not comparing them with West Point?

The Witness: I can't ever remember his writing up a report.

[3094] Mr. Dyer: If they were visiting the cotton mills, they wouldn't.

Trial Examiner: If cotton mill managers found something of interest on a visit to another mill, would they?

The Witness: Yes, sir.

We had reference to Mr. Jackson writing a letter to Mr. Norton on his trip to Springs and he sent a copy of that to the cardedcotton mills.

* * *

[3098] Mr. Dyer: I now offer as GC N-55 a memorandum addressed to various mill treasurers from Mr. Milliken with copies going to Messrs. Byrd and Lowry, dated January 12, 1956.

Trial Examiner: GC N-55 is received.

(The document heretofore marked General Counsel's Exhibit No. N-55 was received in evidence.)

Q. (By Mr. Dyer) Can you tell us the background for this memorandum, Mr. Milliken? A. Yes, sir.

In November the Directors of the mills would meet; and [3099] this being a year end meeting, they reviewed the results of the corporation as estimated at that time for the year to determine the dividend that would be paid and made decisions as to the amount of money that would

be spent for new machinery in line with the recommendations made to them by the Treasurer.

As I have testified earlier, the Directors then, as practice, authorized the two officers, the treasurer and me, to execute the machinery orders in the way that we deemed it would be of best advantage to the stockholders of the particular mill.

As a result of that I asked Ken Lowry and Hal Byrd to review with me the machinery that we were—that machinery that these mills were going to buy and that Hal Byrd would be purchasing as agent for them with the idea of determining as a result of these individual corporation decisions the amount of any specific item that might be being purchased from a specific supplier and determining what group purchase discount would result therefrom, one of the purposes of this being that a mill would say, "Well, if I could buy this equipment at a lower price, it would show a return that would justify my recommending to you, the directors, that we purchase it. If, however, we have to pay this price that we have quoted, it did not fall into the category of showing a sufficiently good return."

So, to answer your question, the background of this request [3100] was to say that I had been reviewing them with Ken Lowry; that they would have on the morning of the 7th of February a report on what prices Hal Byrd had been able to negotiate; and the mill Treasurer could make a determination as to whether he wished to go ahead and buy the particular item in accordance with the authorization given him by the Directors or not.

Q. You also make mention here that as a result of this discussion they agreed to present to our meeting on

February 6 their conclusions and recommendations on different items. A. Their conclusions as to how many of an item these mills wanted individually and what that added up to.

Q. What would be the recommendations as to the type of machinery to be purchased? A. I can remember specifically there was one item which was bought, I think, from a company in Charleston named Long which was a compressor on a picker where they had been able to work out a very good deal. And they recommended at that time—and I think it came up at this particular meeting—that any mill considering it, whether then or for purchase a year later, buy it at that time, because the price was so good that they would never be able to come near getting it again a year later.

Q. You finish up that first paragraph by saying "Some of the recommendations that they will want to make will be [3101] confidential." A. Well, "recommendations" is a poor choice of words. Some of the prices they had been able to obtain was what I meant would be confidential.

Q. Well, at the meeting that took place, was there some pooling of orders?

> Mr. Updike: February 7, 1956 meeting?
>
> Mr. Dyer: That is right.
>
> The Witness: I am sure that whatever orders were placed as a result of that decision, if they were for the same item from the same manufacturer, they were pooled.

* * *

[3104] Q. (By Mr. Dyer) Mr. Milliken, this memorandum reads: "I have a letter from Joe Norton bringing up the question of our vacation plans which, as you know,

are subject to approval by Directors, which was a safeguard which was originally written into the plans in case of serious depression.

"If we have not approved vacation plans in our Directors' meetings, please feel free to go ahead and announce them so that the date on which you pay the vacation pay can be known."

In other words, this is to all the treasurers so that they can announce when the vacation pay will be paid; is that right? A. Mr. Dyer, as stated in here, when the vacation pay plans were originally written, to be conservative it was specifically stated by the—or it was stated in the plan of each mill, which was a plan special to that mill, that the plan [3105] would be—that the plan was subject to approval by the Directors.

Since then, the laws governing the deduction of amounts in previous years which had been accrued for pay plans which I think has been discussed in the hearings had been enacted by the Congress. And as I understood those plans, it said that when a company had accrued vacation pay for a specific employee under such and such a plan prior to December 31 of the previous year, that that money specifically belonged to the individual employee; so that the formal approval of the Directors could only then take effect if it were for pay for a following year.

In other words, the Treasury Department had written new law—or the Congress had written new law governing this matter.

Q. This was just notification to the mills that that was so; is that the idea? A. That is right.

Q. And that they could go ahead and announce the date they could pay the vacation? A. Yes, without having to

call a special Directors' meeting and have the Directors' specific approval of it for the previous year.

Mr. Updike: Is that clear, Mr. Examiner?

Trial Examiner: I think it is, yes.

[3106] Q. (By Mr. Dyer) I would like to ask one question with regard to it: Where vacation is to be paid, let us say, in July of 1956, for how long had the pay been accruing for that time? A. This is so technical and the law has been changed so many times that it is not clear in my mind. I think that it was the—I think that an employee that had been employed for more than six months and less than five years and had been employed from January 1 to December 31, was entitled to two percent of his or her pay at Darlington, which amount would be paid as of May 15 or June 15, or something like that.

* * *

[3107] Q. (By Mr. Dyer) Mr. Milliken, do you recall in 1956 writing to some cotton mill treasurers asking them "Do we have Directors authorizations for all the new machinery that we are committed for"? A. Yes, sir.

Q. What was the purpose of that memorandum? Just to make a double check to see whether everything was proper according to [3108] the books? A. That is right.

Q. You received replies from the Directors? A. Yes, sir.

Mr. Updike: You don't mean from the Directors, do you?

Mr. Dyer: Excuse me. From the mill treasurers.

The Witness: Yes, sir.

Trial Examiner: Before the recess I think you had referred to GC N-58. And then I suggested we

go off the record. I don't think that you completed that. I don't mean to take you off the track.

Mr. Dyer: Thank you.

Q. (By Mr. Dyer) Mr. Milliken, do you have GC N-58 there? A. Yes, sir.

Q. Did Mr. Norton get in touch with you regarding this special loom study project that he was setting up at Gaffney? A. He and I worked one out with the Draper Corporation who had brought out a newly developed high speed loom that they wanted to try out on a cooperative basis in a cotton print cloth mill. And this had reference to 150 looms that they were going to put into Gaffney on a cooperative basis with Gaffney to see whether such a loom could be made to work out in practice.

Q. You state that "in the coming week you will be receiving a letter from Joe Norton about a special loom study project [3109] that he is setting up at Gaffney, in which he will be asking you if you are interested in assigning managerial talent for education to this project. The number of men that he can take for this project is limited, but it presents an unusual opportunity for the training of personnel that you feel have future growth potential.

"I am writing this letter to ask you to please give his letter serious consideration and to do the same with the man that you will recommend from your mill. Great care is going to be taken in selecting the people who are chosen."

Did this loom study project come off? A. Yes, sir.

Q. And were men from the other mills sent to it? A. Only Monarch Mills thought it was worth their while to send a man to Gaffney to work on this project.

Q. Did any of the other mills tell you why they were not able to send men? A. No, sir.

Q. The selection of the men was to be made by the mills is that right? A. Yes, sir. It was made by Bill Sibley at Monarch.

(General Counsel's Exhibit No. N-59 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer two exhibits which are stapled together, the first being GC N-59, a memorandum [3110] from Mr. Oeland to Mr. Milliken dated December 21, 1955. The second being a letter addressed to Mr. Milliken from Mr. Oeland dated December 27, 1955. I offer that as GC N-60.

(General Counsel's Exhibit No. N-60 was marked for identification.)

Mr. Dyer: I note on the back there is a worksheet. This I believe was taken from the Darlington files. And I will detach that rough worksheet on the back.

Trial Examiner: GC N-59 and N-60 are received.

(The documents heretofore marked General Counsel's Exhibits No. N-59 and N-60 were received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, did you write similar memoranda to the other mills requesting information on this labor and overhead cost? A. The other print cloth mills, yes, sir.

Q. Did you receive replies from them as well? A. Yes, sir.

Q. Now, according to this, this information was given to you at West Point, that a good print cloth mill had a

labor cost of 16 cents a pound and an overhead of 16 cents a pound? GC N-60 is Mr. Oeland's reply giving you his figures for 1955 and his proposed figures for 1956; is that right? A. Yes, sir.

Q. Mr. Milliken, do you recall Mr. Oeland writing to you about an apron drafting system on roving frames, and you [3111] referring him to Lockhart as having done some work on that problem?

Let me read it to you: "I have just read your letter of March 11 where you refer to an apron drafting system on roving frames as being most desirable for you. In this connection I would like to refer you to the work that Lockhart has done where they have concluded that if a drafting system other than three looms, it is desirable that they recommend a Rieter drafting system rather than Platt. I thought that you would want to check with them on this."

Do you recall that? A. Yes, sir.

Q. Was this something that occurred every so often, that a mill would write you about some system, and you would know of others and you would refer them to other mills for recommendations? A. Every now and then if I thought of a place where they might get information, I would so indicate.

Q. Do you recall whether the work that was done at Lockhart was part of one of the projects which we have referred to earlier? A. No, sir. They had installed, and were the only mill that was connected with or that had installed Rieter roving frames.

Q. (By Mr. Dyer) Mr. Milliken, we have already referred to the—I think you called them period reports which the mills [3112] submitted to you every four weeks? A. Yes, sir.

Q. Now, did that report have a definite form and shape? A. It was generally different from each mill, but covered a certain number of points.

Q. Now, in addition thereto, did you also receive newsletters from the mills? A. Only from Darlington.

Q. Darlington was the only one? A. Yes, sir.

Q. And generally do you know—— A. Excuse me. I received them weekly from Darlington. I received one once a month from Monarch.

Q. All right.

Did you receive any other newsletters from any of the other mills? A. No, sir.

Q. Did you receive the period reports from the other mills? A. Yes, sir.

Q. Now, the purpose of Mr. Oeland's newsletters were to keep you informed weekly as to what was going on at Darlington; is that right? A. No, sir.

Q. What was the purpose of them? A. Shortly after he went to Darlington, Mr. Oeland told [3113] me that if it was all right with me, he would like to keep sort of a personal diary which he would like to put in the form of a weekly letter to me so that he could put down what he was working towards, what his goals were, and what his accomplishments had been. And I received them on that basis.

Q. Did you ever have any comments to make in connection with them to Mr. Oeland? A. He tells me that I did not.

Q. Mr. Milliken, I show you a newsletter dated May 30, 1955, and direct your attention to the last paragraph on the second page.

Mr. Oeland states he is enclosing two requests for donations. He states: I am under the impression that you told me that donations as a whole from the Deering, Milliken

group were being made to the Committee for Constitutional Government. And, therefore, you will note that we have not sent a check since 1953."

Can you tell me what that refers to? A. Yes. I told him I had personally made a contribution to the Committee for Constitutional Government.

Q. That you personally had? A. Yes.

Q. How about the mills? Were the mills making any donations? A. He said he made one in 1953. But I very much doubt if [3114] any other mill did.

Q. He states he is under the impression that the donations were being made as a whole from the Deering, Milliken group. I was wondering if that had reference to the Deering, Milliken charitable organization. A. No. He asked me about it. This is what he refers to. And I said that I had personally made a donation, and I didn't think it was desirable for Darlington to do it.

Q. He also makes mention of the other requests for a donation in connection with the mental health program.

He states: "We are trying here in Darlington to employ a full time person on mental health to help with the school problem. We here at Darlington make our donations to a local cause where we would perhaps get the most credit. In any event I will be glad to be guided by your wishes."

What did you tell him in regard to that? A. I think the reason he wrote me on that was that I was a close friend of Mr. Charlie Daniels who was a contractor who has done a lot of building in firms that I am connected with and who was a former interim appointee to the United States Senate. And he wished to know if I had a specific thought on this request because it came over Mr. Daniels' signature.

Q. What did you advise Mr. Oeland? A. I don't know whether I advised him anything. I would gather that I did

not answer this, because he said that he [3115] expressed a preference to do it locally if, as, and when the opportunity came up.

Q. In his newsletters Mr. Oeland advised you as to various changes he was making in the mills.

For instance, do you recall being advised that he was going to make some changes in drawing frames and that he was hoping to take out one drawing frame tender on each shift and a creeler on the roving frames?

Mr. Updike: I object to the question. I believe that Mr. Dyer is trying to summarize in a way. But he has asked two questions. One is that: Did Mr. Oeland generally advise you in the newsletters what he was doing at the mill?

How the witness would know the answer to that I don't know.

Then he says "For example, did he advise you this." That is what the witness thinks he is answering, but in reality he is answering two questions, one of which is general as to a practice and the other is immediate as to a specific instance. I don't think the question is really proper.

Mr. Dyer: All right. I will revise it.

Trial Examiner: Let me recall to you, Mr. Dyer that the witness has told us that Mr. Oeland said that he proposed or he would like to keep him posted on his goals and accomplishments.

Now, that is a general statement, but that seems to cover [3116] what you——

Mr. Dyer: Well, I wanted to find out how particular it got, sir.

Trial Examiner: All right.

Q. (By Mr. Dyer) Did it get down to the particular point where Mr. Oeland was telling you the changes he planned to make in personnel during the week.

Mr. Updike: I don't think that is susceptible of an answer. He may have from time to time advised me, but as to whether he did all the time the witness couldn't possibly know, I don't believe.

Mr. Dyer: I will take it on the basis of did he from time to time advise you of the changes he was making in personnel at the mill each week?

The witness: I think what he was advising me about——

Trial Examiner: Well, specifically did he advise you about intended changes in personnel?

The Witness: The way I would like to answer that—because what was meaningful to me was that he was advising me about what steps he was taking to reduce his costs.

Trial Examiner: And did that include personnel changes?

The Witness: Yes, sir.

Trial Examiner: Anything else, Mr. Dyer?

Mr. Dyer: Not on that particular point, no, sir.

[3117] (General Counsel's Exhibit No. N-61 was marked for identification.)

Mr. Dyer: Mr. Examiner, I offer in evidence what has been marked GC N-61, being a letter addressed to Mr. Milliken from Mr. Oeland dated August 5, 1955.

Trial Examiner: GC N-61 is received.

(The document heretofore marked General Counsel's Exhibit No. N-61 was received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, I direct your attention to the first paragraph concerning Mr. Bill Goodwin coming to Darlington to work on the weaving problems. I had better read the whole paragraph.

"I called Ken Lowry at Hartsville after our telephone conversation with regard to the possibility of Bill Goodwin staying with us three months to see if he could straighten out our weaving problems. Ken said in view of the fact that we are already making plans to have Bill come here to work with me that it might be better to continue along with those plans and let the matter of a longer period of time here unfold itself. I believe this is the best approach and we will keep in mind your suggestion, and as Bill gets into the problems he finds with us we can then make a decision as to whether to let him concentrate on this problem for a longer length of time."

What was your suggestion in this regard, Mr. Milliken? [3118] A. Well, I think that when I was down at Darlington for the Directors' meeting in July of that year, and Mr. Oeland was reviewing the situation for me, he made the point that he was having a real problem in his weave room with efficiencies and so forth.

And I asked him if he had used Bill Goodwin whom I knew had had a background of training with the Draper Corporation and was very knowledgeable in this field—if he had used him to the full extent of his capabilities?

Q. Did you offer any suggestion to Mr. Oeland about employing Bill Goodwin? A. No. I just told him that I had heard that he was an excellent man and I wondered if he couldn't use him in some capacity.

Q. All right.

In this memorandum, or letter rather, in the fourth paragraph on the first page Mr. Milliken makes mention of the Barnes Textile survey——.

Mr. Updike: You mean Mr. Oeland?
Mr. Dyer: Excuse me. Yes.

Q. (By Mr. Dyer) Mr. Oeland makes mention of the Barnes Textile Survey, and Mr. Woodward coming there to discuss the second phase of their weaving survey.

He mentions that Russell Newton mentioned at a conference that he knew Mr. Woodward and would like to sit in on the [3119] next conference. And he has arranged for him to do so. Mr. Lowry is considering coming back or having someone from his department here at the same time.

Now, was it customary to have the Service Corporation or members from the Research Corporation present when an outside textile survey was being made? A. You will remember, Mr. Dyer, that Mr. Oeland and I and others of the Directors were very worried about Darlington's situation in the weave room. I think if I remember correctly the efficiency had dropped to something like 82 or 83 percent at this time, or earlier; and it was as a result of that that he and I felt that it was necessary to get an outside textile consultant in to study our situation and see if they could find out what was wrong.

And this was in addition to Mr. Oeland's asking Russell Newton what he could suggest to help.

You can see Mr. Mobley of Research was down there to see if it was in the slashers that the problem was. And he also was asking Mr. Lowry and Bill Goodwin to—all of whom were in the Service Corporation—to see if they couldn't come up with an answer to this problem. And I

think that there was nothing usual about this kind of a meeting. This was a special meeting on a very special problem that Darlington had.

Q. My question is: Where you do have an outside survey [3120] being made, ordinarily does——

Trial Examiner: Well, the witness told us this was not usual. Now, before we go further, I would like to find out whether an outside survey is usual, or how common it is.

Mr. Dyer: All right.

Q. (By Mr. Dyer) Is an outside survey usual or unusual? A. It is quite unusual and only used where there is a very specific serious problem.

Q. And where that unusual situation does develop, do personnel from the Service Corporation or Research Corporation set in on it? A. In the other instance that I think of where this was done, personnel from the Service Corporation and the Research Corporation who had also been working on the same problem did sit in on the meeting.

(General Counsel's Exhibit No. N-62 was marked for identification.)

Mr. Dyer: I offer what has been marked as GC N-62, being a letter addressed to Mr. Roger Milliken from Mr. Oeland, dated August 10, 1955.

Mr. Schoemer: That is not a newsletter.

Mr. Dyer: Yes. This is a regular letter.

There is no heading "Newsletter" on it as there was on the previous exhibit.

Trial Examiner: GC N-62 is received.

[3121] (The document heretofore marked General Counsel's Exhibit No. N-62 was received in evidence.)

Q. (By Mr. Dyer) Now, in this letter Mr. Oeland discusses the steps he took to get these overseers to work together to reduce loom stops. He says he wants to let you know the action.

He stated that he called them together and told them about Mr. Stallworth making plans for a change, and he states "While I had them together I discussed the fact that Barnes Textiles stated that competition was able to get their loom stops down to .5."

He stated: "I stated that Barnes Textiles had said that they felt there were some things we would have to do in the way of putting pneumafil on all our spinning and reducing the speed of our X-model looms from 182 to 168 picks per minute. That even though we might question the possibility of going down to .5 loom stops, we could go to 1.0 where we were last August and September."

Then he states "I went over the fact with the group that our pay on a number of studied jobs like weavers, drawing tenders, roving tenders, spinners and doffers was well above the average of competitive mills within the Deering Milliken group and information we had received on other mills; that we had known for some time that the pay of our overseers was less than other of the D. M. Mills; [3122] that I have been on the defensive in that we had failed to produce at Darlington in comparison with other mills as far as results from a cost angle were concerned. That I was going to make a proposition to the overseers that as a group if we would work together and get our loom stops down to 1.0

that all the overseers would get an increase of 10 percent in salary.

"We would still be under most of the mills in the D.M. group but I felt a shot in the arm might be a good thing at this time. I did not want to have a let-down, and feel that if the overseers will accept the responsibility we can go right ahead on our program of reducing our loom stops. I already have noticed some things that have been done that encourage me to believe we will show improvement here. There is no doubt in my mind it can be done."

Did Mr. Oeland discuss this with you before he wrote this letter? A. No, sir.

Q. Did you reply to the letter? A. No, sir. I was on vacation at the time.

Q. When you got back and read the letter, did you thereafter discuss it with Mr. Oeland? A. No, sir.

Q. Now, as to the information on the pay for studied jobs in other mills, where would Mr. Oeland have gotten that [3123] information? A. I think this letter is writing about the time of the other meeting we discussed this morning where a wage increase went in. And he had seen information on wage rates from other mills and had probably discussed his rates with other mills in the so-called Deering, Milliken group at that time.

Q. He mentions the studied jobs, the pay rates on studied jobs.

What does that refer to? A. I think that means on jobs that his industrial—that the Darlington Industrial Engineering Department had studied and on which they set up a studied piece rate.

Q. Well, would that also refer to the fact that those same jobs had been studied at other mills, since he is talking about comparison of pay? A. Not necessarily.

Q. All right.

He also mentions in here about the pay of supervisors and overseers. Was that information available at the conference on wage rates? A. No. I think I said that I didn't remember it was discussed at that time. But he probably asked the question at that time.

Mr. Updike: Mr. Buchanan, may I suggest that we know [3124] we are going to have Mr. Oeland as a witness. And he is asking Mr. Milliken a number of questions here which invites Mr. Milliken to speculate on what was in Mr. Oeland's mind. And I do think it might be deferred appropriately.

Mr. Dyer: This is information which I thought Mr. Milliken might have.

Trial Examiner: Well, his last answer was "Mr. Oeland probably". And then he went on.

Mr. Dyer: Well, I will be glad to take it up with Mr. Oeland.

(General Counsel's Exhibit No. N-63 was marked for identification.)

Mr. Dyer: I now offer as GC N-63 a letter addressed to Mr. Roger Milliken from Mr. Oeland dated August 31, 1955.

Trial Examiner: GC N-63 is received.

(The document heretofore marked General Counsel's Exhibit No. N-63 was received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, in this letter Mr. Oeland refers to Mr. Goodwin's transferring to Darlington. He states: "Over the weekend he talked to Mr. Lowry and told me Monday that he had Mr. Lowry's approval for the transfer. I called Ken and confirmed this understanding. We both made it clear with Bill that there would not be any looking back as we felt one of the things he must decide was whether he wanted to come, and not have this back and forth situation [3125] that we have experienced. This is clear with him, and he has accepted the position.

"I feel sure this meets with your approval."

Did you express your approval or disapproval to him thereafter of the action? A. No, sir.

Q. In the bottom paragraph Mr. Oeland refers to two other individuals he has interviewed.

Do you recall thereafter asking Mr. Oeland for results of his interviews with these two individuals? A. I think that I remember that Mr. Oeland wrote me about one of these men saying that he had interviewed him and thought that he might be—well, it says here "I was very much impressed with Mr. Funderburk, and feel that Mr. Deal has good potentialities in our organization."

And I don't know whether he wrote another letter about them or not.

(General Counsel's Exhibit No. N-64 was marked for identification.)

Mr. Dyer: I offer GC N-64, being a letter addressed to Mr. Roger Milliken from Mr. Oeland with two attachments, dated September 5, 1955.

Trial Examiner: GC N-64 is received.

(The document heretofore marked General Counsel's Exhibit No. N-64 was received in evidence.)

[3126] Q. (By Mr. Dyer) After reading the letter, do you recall whether you asked Mr. Oeland for his impression of these two individuals? A. Yes, I think I must have.

Q. All right. And this letter——

Mr. Updike: This letter being N-64?

Mr. Dyer: Yes.

Q. (By Mr. Dyer) There are attached two memoranda, both addressed to you, one dealing with Lewis Deal and the other with James Funderburk.

Can you tell us what you did with the information after you got it? A. I think I probably gave it to Charlie Johnson and asked him if he had any request from any mill for persons who had this kind of a background.

To the best of my knowledge neither of these men became associated with any mill that I am connected with.

(General Counsel's Exhibit No. N-65 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer a letter addressed to Mr. Milliken from Mr. Oeland dated August 29, 1955. There is an attached schedule on the back.

Trial Examiner: GC N-65 is received.

(The document heretofore marked General Counsel's Exhibit No. N-65 was received in evidence.)

[3127] Q. (By Mr. Dyer) I think this has been referred to before, the wage conference that was held at Drayton. And in the second paragraph Mr. Oeland refers to the information that was made available at Drayton.

And in this letter he sets out the percentages of increase, et cetrea.

> Mr. Updike: Is there a reference there to a wage conference?
>
> Mr. Dyer: We were talking about Drayton. In the previous testimony we were talking about the wage conference held at Drayton.
>
> Mr. Updike: There was a wage discussion held some place. Or there is a discussion of wages some place. But whether it was a wage conference is something else.
>
> Mr. Dyer: All right.

Q. (By Mr. Dyer) Was this the wage conference or discussion or whatever you want to call it—well, was it held at Drayton? A. Yes, sir.

Q. In here Mr. Oeland lists certain percentages of increases. Did you receive similar letters from the other mills telling you what percentage rates they were going to increase their personnel? A. No, sir.

Q. Were you informed by any of the mills as to what their [3128] plans would be in regard to this increase; whether they planned to give the full five percent increase or lesser amounts? A. No, sir. This was a decision that was made, as was the case here at Darlington, by the treasurer.

Q. I was just asking whether you were informed of what the decision was? A. I was informed at Darlington.

But I do not remember receiving any other letter from any other mill on this subject.

Q. Mr. Milliken, do you recall writing a letter to Mr. Oeland advising him that he should use his personal car for mill business? A. Yes.

Q. And the basis of your writing to him was so he could claim use of the car as a tax deduction; is that right? A. I think it is wrong to say he should use it.

Q. Well, authorizing him; is that the idea? A. I was merely writing down in the form of a letter from me as president to him as treasurer my understanding of what he was doing with his car, and that under the rules established by the Treasury Department, this would make it possible for him to take some tax deductions for same.

Q. All right.

Then, in the letter you said "I want to authorize and request you to provide a car for these services." Do you [3129] recall using those words? A. Yes, that is right. That was what I was told was the way it would make it possible for him to get a tax reduction for something that he was doing in the course of business.

(General Counsel's Exhibit No. N-66 was marked for identification.)

Mr. Dyer: I offer what has been marked GC N-66, being a letter addressed to Mr. Roger Milliken from Mr. Oeland dated September 5, 1955.

Trial Examiner: GC N-66 is received.

(The document heretofore marked General Counsel's Exhibit No. N-66 was received in evidence.)

Q. (By Mr. Dyer) Mr. Milliken, this is in regard to Mr. Oeland—well, let me read it:

"In our conference this morning among our supervisors both Bill Hawkins and Bill Goodwin recommended that we go ahead and buy the tension device put out by Brush. We are preparing an authorization and forwarding for your signature. We had this device on trial for ten days and it was their recommendation that we buy it. I trust that this meets with your approval."

Would this be a capital expense items, Mr. Milliken? A. It would be a capital expenditure, yes, sir.

Mr. Schoemer: The original of the letter bears the legend "Okay, R. M."

[3130] Mr. Updike: Would it save time to put on the record that the practice with respect to all matters of capital expenditure was to——

Trial Examiner: Well, I thought we had that.

Mr. Updike: —was submitted to Mr. Milliken for his approval as president of Darlington or the respective mill corporation that was involved.

Mr. Dyer: The only question I had here was whether that was to be considered as a capital expenditure or more or less as an expense item.

The Witness: Capital expenditure.

Mr. Dyer: If I could have a few minutes, I might be able to cut out some of this material here?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: Back on the record.

We will take a five-minute recess.

(Whereupon, a short recess was taken.)

Q. (By Mr. Dyer) Mr. Milliken, do you recall receiving a request for a capital expenditure on a doff box conveyor at Darlington and writing a memorandum back to the mill stating that you are wondering if this is something we want to do, because it only shows us a return before taxes of fifteen percent, which is very, very low. A. Could I see that?

Q. Sure. [3131] A. That is right. I did write such a letter.

Q. And have you turned down other requests for capital expenditures because the return on investment was low? A. Yes, I have.

Q. Is that one of the criteria you used in deciding whether or not an expenditure is worthwhile? A. Yes, sir.

Q. What other criteria do you use? A. That is the basic one—return on investment.

Q. As far as the Institute of Textile Technology is concerned, the members reported on a three year contract basis; is that right? A. That is the standard form of contract, yes.

Q. Do you recall authorizing Darlington to enter into a three year contract in June of 1956? A. The Directors did.

Trial Examiner: Three year membership contract, did you say?

Mr. Dyer: Yes, sir.

Q. (By Mr. Dyer) Did you tell Mr. Hance to send the contracts directly to the mills for their execution? A. Well, I think that he always did do that.

(General Counsel's Exhibit No. N-67 was marked for identification.)

Mr. Dyer: Mr. Examiner, I offer a letter addressed to [3132] Mr. Roger Milliken from Mr. Oeland dated May 9, 1956.

Trial Examiner: GC N-67 is received.

(The document heretofore marked General Counsel's Exhibit No. N-67 was received in evidence.)

Q. (By Mr. Dyer) In this letter——

Mr. Updike: Mr. Dyer, our filing system is less than perfect today.

Mr. Schoemer: I assumed Mr. Oeland would be asked about these things.

Q. (By Mr. Dyer) In this letter Mr. Oeland discusses the plans for vacations in the first paragraph.

He states he discussed it with Mr. Poag and he states he feels the plan has merit and would like to recommend that we plan to do this, making announcement at the appropriate time if Mr. Poag approves.

In the second paragraph: "It is my opinion that it would encourage our good people to work up until that time if they had it to look forward to. From the condition which I set out in my letter today, it looks like the card room will have very little spare help and we will have to arrange to get in more to give these good people vacations on their request. I would like to have your approval before we move in the matter."

Did you give Mr. Oeland your approval? A. I don't remember. This is a very unusual form of request [3133] to me. And I don't know whether I answered this or what I told him if I did answer it.

Q. All right. It could have been a telephone conversation or letter? A. Yes, sir. Or nothing at all.

Q. Do you know whether Mr. Oeland went ahead with these plans? A. No, sir, I do not.

Q. Earlier today I asked you about the—I asked you if you had sent a letter to DM Mills asking them how many people they had on less than forty hours.

Do you recall that? A. Yes, sir.

Q. I show you the letter from Mr. Oeland and ask if this is his reply.

Trial Examiner: Was the other letter received in evidence?

Mr. Dyer: Maybe this is the second reply.

Mr. Schoemer: Apparently it was GC N-46, dated September 15.

Mr. Dyer: This can't be a reply, then.

(General Counsel's Exhibit No. N-68 was marked for identification.)

Q. (By Mr. Dyer) Mr. Oeland, in this letter, talks about "We trust that by the next treasurers' meeting we will have materially reduced the number of spare hands and thus decreased the number who get less than forty hours a week."

[3134] Had you made a second request after the first initial one? A. When was the first one put in?

Q. September 1955. A. I think I did.

Trial Examiner: September, 1955?

Mr. Dyer: Yes. And this is 1956.

The Witness: I think I did, Mr. Dyer.

Q. (By Mr. Dyer) Now, Mr. Oeland breaks down how the various people who got less than forty hours and on what basis they were not getting forty hours. He states:

"Mr. Goodwin is steadily working on eliminating spare help. Where we have someone dropping out we are either arranging to transfer spare help from another department or seeing if it is possible to do without the spare help in the department which lost the employee. We are hoping as time goes on we can educate our employees to the importance of regular work and this will help us do away with the group that are continually out sick part of the time."

Was there a program of any sort in regard to eliminating the number of spare help at all of the mills, or was this only at Darlington? A. Mr. Dyer, answering your question: When the information came in to me the second time and the first time, I was startled to find that a great many of the mills who answered [3135] were operating without any spare help at all.

I remember where a mill reported they had 250 jobs in the mill and 248 employees; and as against that there were a number of mills, Darlington being one of them, where there were approximately ten to twelve to fifteen percent of spare help. I don't remember which it was. And that resulted in this lack of forty hours per week. And not having any experience myself in manufacturing or administering such a problem, I asked question of people who had a large number of spare help as to why it was that Mr. Oeland was—Mr. Oeland was obviously one of them—why it was he had so many, and was it a desirable thing to do or was it just a bad habit that had grown up in a particular situation because it had always been that way.

Q. Well, would Mr. Oeland indicate to you it was just a bad habit? A. Mr. Oeland indicated to me he felt it had gone farther than it needed to go. He felt, as I remember it, that he needed more spare hands, and perhaps some other mills did, in his opinion.

Q. Now, in the other mills that had spare help, did they also indicate that it was a matter of bad habit there too? A. No. Some of them insisted it was right for them to have as many as they had. And that is the way they felt it was best to run their particular mill.

[3136] Q. I see. A. As I remember it, Pacolet mills said that they had a lot of older women that had been employed a longer time that appreciated the opportunity to get a day off and that they felt that they preferred to work that way.

Q. Were there other situations like the one you have illustrated at Pacolet where it was desirous to keep spare help? A. Yes, sir.

Q. Where there was no—when the mill gave no particular reason for keeping spare help, did they admit that it was a matter of bad habit? A. Well, I didn't get an opportunity to discuss it with every mill.

Q. Where the mill did not present a reason for keeping spare help, did they go ahead with a program to reduce the number? A. Mr. Dyer, what I did was I asked the question "Do you feel after you see these figures that I have that what you are doing is right?"

"If you do, go ahead and keep doing it. If there is, you think, something you can learn from this, I hope you will do it the way you think is right for your particular situation."

(General Counsel's Exhibit No. N-69 was marked for identification.)

Mr. Dyer: Mr. Examiner, I now offer as GC N-69 a letter addressed to Mr. Roger Milliken from Mr. Oeland dated August 3, 1956, with the caption "Newsletter".

[3137] Trial Examiner: GC N-69 is received.

(The document heretofore marked General Counsel's Exhibit No. N-69 was received in evidence.)

Q. (By Mr. Dyer) In the first paragraph Mr. Oeland makes mention of having Mr. Lowndes of DMIED showing charts to supervisors. The charts that they had at the last treasurers' meeting.

He says: "I feel that this was very helpful in putting over to our group where we stood as compared to the other mills as well as the progress that is being made by some. I was delighted at the interest some of our overseers had in the charts, especially our spinning room overseer who is working very hard to improve his cost. The results are already showing, and I feel sure as time goes on he will continue to make improvements. We realize in our carding that we will have to keep pushing if we want to hold the position we presently have. As soon as we can complete some plans that we have of installation of pneumastop, and dragline to pull out the roving cans we will make further improvements in costs."

Are those charts the ones referred to previously today? A. Yes, sir. Progress charts against goals and reducing costs.

And it was a suggestion of a number of the treasurers at the treasurers' meeting that it would be very helpful to [3138] them in working out their own program if Bill Lowndes could come down with the charts and make a presentation to Darlington. For instance, as to what the story was.

* * *

[3157] The Witness: I have checked, Mr. Dyer personally. And as to the Lockwood Company I find that there were 24,373 shares of common stock outstanding, of which the lin[illegible] descendants of my grandfather, either directly o[illegible]ndirectly, owned 11,747 shares, or less than a majority; slightly less than a majority.

Q. (By Mr. Dyer) I believe you said directly or indirectly. That would mean through Deering, Milliken or Cot-Wool? A. Yes, sir, or something like that, or trust or however.

Q. Yes. A. As to the Dallas Manufacturing Company, I have checked and find that there were—well, can I make one other addition on Lockwood? That there were a total of 214 stockholders.

As to the Dallas Manufacturing Company, there were a total of 145 stockholders. There were a total of 15,000 [3158] shares of common stock, of which 8,328, or slightly more than a majority, were owned by the same persons directly or indirectly as described previously.

Q. All right.

I think we had one other question as to this article, the editorial which appeared in the Keowee Courier, from Walhallo, South Carolina. Did you look into that matter to determine whether you sent the copies of that around? A. Yes, sir. I checked with my secretary.

Q. All right. A. And she checked back and found that we had maintained a scrapbook of clippings that were sent to us or were extracted from newspapers during the period that the affairs of the Darlington Manufacturing Company were in the papers.

She found an excerpt from the newspaper itself of this editorial. She also found a similar copy to the one you showed me the other day. I asked her if we had prepared this. She said we had not. That this was not written on her typewritter. And it had obviously come in from somebody. She didn't know from whom.

* * *

[3162] Q. (By Mr. Dyer) Mr. Milliken, do you have General Counsel's 69? A. Yes, sir.

Q. I direct your attention to the last two sentences in the second paragraph. A. Yes, sir.

Q. Did you thereafter comment to Mr. Oeland in regard to that matter? A. No, sir I did not. Because I did not receive this letter until after the election had taken place.

Q. You mean you were on vacation from the time of August 3rd until after September—— A. Well, I have checked my calendar backwards, and I find that I went on vacation the end of July and subsequently went out to the Republican Convention in San Francisco where I was a Delegate. And then immediately following that, I flew back to New York and took a boat to Venezuela and did not return to New York until September 4. I took the train down South on the fifth—I took the train down South on the 6th and arrived home on the 7th of September. So that I did not see any mail that had accumulated in my absence until that time.

Q. All right. Do you recall reading this letter at that [3163] time? A. I must have read it somewhat later; probably a week or so after that when I was catching up with the less pressing communications that come in over a period of four or five weeks.

* * *

[3169] Trial Examiner: Well, I think we want to know whether or not there was any.

Mr. Updike: Do you have any recollection of having communicated with him?

* * *

[3170] Trial Examiner: General Counsel's N-73 is received.

* * *

[3171] Q. (By Mr. Dyer) Let me direct your attention to the fifth paragraph? He states: "I had a call from Mr. Lowry listing sixteen of our office and supervisory personnel who DMIED agrees to carry for a period of three months after their separation from the Darlington Payroll. We have notified each of these men of the action taken and I feel sure that they very much appreciate it."

He goes on to state: "Several of the men have been discussing jobs with other organizations. If they can have this information for a background of their standing should they seriously consider making a change to plants other than D.M. it will be very helpful."

Can you tell us how arrangements were made for DMIED to carry these people on the payroll? Or who suggested it? A. I believe that Mr. Lowry has said that he knew as head of the Service Corporation that the mills for which the Service Corporation was working were constantly looking out for qualified people; he felt, as I understand what he says, that there were at Darlington qualified personnel, and that he would be—knowing of them and having known some of them personally, I guess on his visits down there, that he would be glad to—that he had plenty of work personally for them, [3172] and he felt sure that

if he was able to hire any of them—and he subsequently was unable to hire any—that the mills for which his service corporation was working would want them.

Mr. Updike: May I interrupt just a second?

The reference to Mr. Minot Milliken's testimony is Exhibit B-4; where the year end—where the figures were given.

Q. (By Mr. Dyer) Did you have any conversation with regard to DMIED picking up these individuals? A. Yes, I think I did.

Q. Did you approve the plan? A. He told me that he needed men himself and that he was sure the mills for whom he was working needed them, and that he thought this would be a splendid source of obtaining such personnel.

And I said I think that you are exactly right.

* * *

[3173] Q. All right.

Now, as to the—during this time that plans for the sale were proceeding, and the brochures regarding the Darlington sale had been made out to various mills throughout the Southeast—is that right—— A. They were mailed out to as full a mailing list as it was possible for the Samuel T. Freeman and Company and Hal Byrd to get together.

Q. All right.

Did the people notify you whether they were planning to come to the sale or not? Did they notify Darlington of that? A. A great many people during this period from other textile mills made visits to the plant to look over the machinery, and they then indicated whether they were coming or [3174] not. And I kept asking Mr. Oeland, who had been there, and who was coming, because I was very

anxious on behalf of the stockholders in getting the largest possible price for the machinery, to see that as many people came as were interested in coming.

And in that connection I think I sent quite a number of telegrams myself to heads of textile organizations encouraging them to come.

Q. All right.

Now let me direct your attention to the last paragraph on the first page, about the fourth line from the bottom:

"We received from Lockhart this week some equipment that they are planning to sell along with our equipment. We are cleaning out a warehouse and putting all this equipment sent here by other mills in one warehouse so there will be no confusion as to what is what at the sale."

Can you tell us who suggested that the other mills get rid of their surplus equipment through the Darlington sale? A. I think Hal Byrd suggested that if some mills had some movable equipment that they wanted to sell, that he thought he could work it out with Mr. Addison Freeman of Samuel T. Freeman and Company to auction this eqiupment off at the same time.

Q. Was this equipment listed in the Darlington Catalogue? [3175] A. I don't know.

Q. Was any reference at the sale made to the fact that this was not Darlington equipment? A. I just can't remember. I think it was.

* * *

[3183] Q. (By Mr. Dyer) I wanted to ask a question regarding the retirement plan. I think there has been a bit of confusion in the past as to how many retirement plans there are. I hand you a letter addressed to Mr. E. L. Meyer from Kate MacFarland; the heading reads "The Deering, Milliken Mills' Retirement Plan."

As I understand it this is a general plan which the mills individually adopt—is that the idea? A. No, sir.

* * *

[3184] Q. (By Mr. Dyer) Then can you tell us, since this seems to say one plan, what actually took place? A. All right, sir.

The Darlington Manufacturing Company, the directors, and stockholders thereof in the past have approved a plan to cover the salary, all of the salaried employees of the [3185] Darlington Manufacturing Company. The stockholders and the directors of the Monarch Mills approved a plan covering all of the salaried personnel of the Monarch Mills Corporation. The funds generated by the employees contributions and the company contributions to this plan which were made on an actuarial basis, computed specifically for each mill's plan, were deposited with J. P. Morgan and Company, Incorporated, and they lumped all of the funds together for purposes of investing them in Government Bonds, Municipal Bonds, Preferred Stocks, and/or common stocks.

At the end of a year, as the yield on these capital assets were figured, that is to say 3.8 percent was the yield that took place, that 3.8 percent was credited to the Darlington Manufacturing Company plan on the amount of capital assets the Darlington Manufacturing Company had generated by their plan.

To illustrate the difference between the different mills and the way the directors thereof handled the plan, when Darlington Manufacturing Company was liquidated, the directors of the Darlington Manufacturing Company voted to continue in existence as set up the Darlington Manufacturing Company's Retirement Plan. When the Lockwood

Company was liquidated, the directors of Lockwood voted to purchase annuities for the remaining beneficiaries under the plan and disband the plan completely and terminate it.

[3186] Q. Well, can you tell us—if the plan at Darlington was continued—how were contributions made by the Darlington Manufacturing Company to that plan? A. They ceased at the time as of when an employee ceased receiving compensation from the company.

Q. In other words the plan was discontinued? A. No, sir. The plan is an entity. It has a certain amount of money in it. There are certain people to whom their own contributions and the company's matching contributions, plus the interest, earn on this during the period of the time of liquidation and since liquidation; it is set aside; it is all figured actuarily for each one. And each employee who is covered under the Darlington Manufacturing Company plan today may elect any one of the provisions that the retirement plan calls for, as to whether he wishes to consider himself retire at 60 and receive a sum certain per annum, until the benefits set aside for him have been liquidated, or whether he wishes at age 65 to take that option or whether he wishes to take an option as between himself and his wife, et cetera.

The plan is in being and will generate benefits at the time the employee exercises the option to the extent that he and the company in the past have contributed to the specific Darlington Mills Pension Plan and to the extent that those funds have either increased in value or have generated income.

Q. There are no further contributions being made, are there? [3187] A. No, sir.

Q. Now, as to the plan, do each of the D-M Mills also have a retirement plan? A. Each of the mills that sells through Deering, Milliken have a retirement plan, which is voted by their stockholders and directors.

Q. In each case is J. P. Morgan the Trustee of the Plan? A. It is of the mill's plan.

Q. All right.

Now, the heading on this mentions "Pension Committee". Is there one central pension committee for all of the mills? A. There is a pension committee for the Deering, Milliken Mills' Retirement Plan.

Q. Now you mention that there are some——

Trial Examiner: Well what is the function of the Pension Committee?

The Witness: The function of the Pension Committee——

Trial Examiner: Well excuse me. First, when you say there is a pension committee for the Deering, Milliken Retirement Plan——

The Witness: The mill's retirement plan. There is an entirely separate plan for Deering, Milliken and Company, Inc., which is trusteed by the First National City Bank of New York.

Trial Examiner: Just a moment.

The Witness: Which has its own pension committee.

[3188] Trial Examiner: What is the function of the pension committee of the Deering, Milliken Mills' Retirement Plan?

The Witness: I believe that there are three things that it is asked to take official action on when it meets. One of them is the employment of an actuary. The second is to receive from each of the mills notification of the presons who have been terminated under the plan during the course of the year or who have qualified during the course of the year for inclusion in the plan for purposes—or for the purpose of making that action official as far as the bank trustee is concerned.

And the third is to make any decision that the bank may request it to make as regards investment policy or procedure.

And the only instance that has ever come up on that is when J. P. Morgan and Company recommended in the first instance that 20—that up to 25 percent of the funds be invested in common stocks, and subsequently I think it was last year they recommended to the pension committee that they approve raising that figure to 30 percent inasmuch as J. P. Morgan and Company acting for its own pension plan of the employees of J. P. Morgan and Company—had changed their retirement and raised it from 25 percent to 30 percent.

As far as I know those are the functions of the Pension Committee.

Q. (By Mr. Dyer) Now, I think in the previous case we had [3189] some testimony as to certain changes which were made in the retirement plan giving certain options to employees as to when to take their monies.

Can you tell us if the pension committee would be the one to pass on those resolutions to the various mills for their adoption or rejection? A. These resolutions making the changes were adopted by the directors and I believe the stockholders of each individual mill.

Q. The question was: did the pension committee make the recommendation on whether it should be adopted or rejected? A. I do not know, Mr. Dyer; the answer to that.

* * * *

Mr. Updike: I can state that our information is that Fleming Bomar wrote those changes, Mr. Bomar being a partner of Ivins, Phillips and Barker in Washington, D. C.

The Witness: I think that is correct.

* * *

Q. (By Mr. Dyer) As to the plans themselves as at the various mills, were there any differences in the elections [3190] which were offered to the various mills?, A. I do not believe so.

* * *

Q. In regard to the letter I just handed you, Darlington had arranged to pay Mr. Nicholson a certain fund after his resignation from Darlington; is that right; on a monthly basis. A. That is correct.

Mr. Updike: You don't mean a fund?

Q. (By Mr. Dyer) Was it a retirement? How was it to be considered? As a retirement or what? A. Mr. Nicholson asked for early retirement. And at that time the directors offered to make him payment of a supplementary nature to that which he would receive under the Darlington Mills' Retirement Plan.

* * *

Q. (By Mr. Dyer) Now when the question of Darlington's liquidation came up, that raised some question as to how the [3191] payment was to be made to him after liquidation of Darlington; is that correct? A. That is correct.

Q. Now, I direct your attention to I think the last sentence in the third paragraph there.

Can you tell us how Cot-Wool got into—got in to paying Nicholson this amount? A. Cot-Wool has not gotten into paying Nicholson any amount. It is my memory that this commitment to Mr. Nicholson was a sum certain to be paid each year; that the actuary was asked to take Mr. Nicholson's life expectancy in Darlington's funds trusteed by Grace Bank would set aside a certain amount of money

which should be enough to pay the amount if he lived out his normal life expectancy as figured by the actuary.

Mr. Nicholson came to me and he said it was a possibility which he hoped would materialize, that he would outlive the actuary's expectation, and that he understood that he had a commitment for life and what would happen in that circumstance.

I said I hoped too that it would work out that way. And I also felt that when the directors had asked me to communicate their decision to him that they were making too a commitment to him that would be for life. And I said that I would try to see what we could do about it.

And I thought about it. In thinking back and remembering—[3192] because I felt there was an obligation that we wanted to live up to—that inasmuch as Mr. Nicholson had been employed prior to his going to Darlington by a firm, the Excelsior Mills, which had a long—well, by Excelsior Mills, which was a hundred percent owned subsidiary of the Cot-Wool Manufacturing Company, that I would recommend to the Directors of Cot-Wool that they pass a resolution agreeing to pick up any payment that might be owing to Mr. Nicholson should the eventuality discussed materialize.

Q. Did the Directors at Cot-Wool agree to do so? A. They did, yes.

Trial Examiner: Let me state my impression so that if it is erroneous, it can be explained.

In connection with the Nicholson payments, was this a wholly voluntary and gratuitous assumption by Cot-Wool of an obligation which arose out of a commitment by Darlington?

The Witness: I think I told Mr. Nicholson, Mr. Examiner, that I did not feel that Darlington Manu-

facturing Company had a legal obligation to him over and beyond that which could be figured by an actuary in view of the fact that Darlington Manufacturing Company had been liquidated; but that because of the fact that I would think about it first, then I brought it back to him that I had thought about it; that it was true that he had been associated with the Excelsior Mills in Union; it was a fact that his father had founded the [3193] Monarch Mills which had sold through Deering, Milliken and Company; and in view of the long personal relationship that had existed between his father and my father, between him and my father, and between him and me, that I would propose to the Cot-Wool Manufacturing Company that in the event that these circumstances did transpire, that they would make a voluntary commitment to pay him a certain amount as long as he lived.

Trial Examiner: Well, I was thinking not of the relationship between yourself and Nicholson or Darlington and Nicholson, but rather concerning the assumption by Cot-Wool of an obligation which it didn't have.

The Witness: I don't consider that it was an obligation that they had or that anybody had. I think that this was a voluntary action that they voted to make in view of a long series of circumstances. Mostly personal.

Q. (By Mr. Dyer) Mr. Milliken, I think it has been stated that Mr. Oeland came with Darlington in 1951.

Can you tell us how he came to be offered this post as Treasurer, at Darlington? A. Yes, sir. When Mr. Nichol-

son asked the directors, or told the directors that he would like to ask for early retirement, they asked me if I would find a man who I felt could take Mr. Nicholson's position as Treasurer. I made investigations. And as a result of these investigations, I felt that because of his lifelong experience in the textile [3194] business, first with Clifton Manufacturing Company, and then with the Riegel Manufacturing Company, and then with the Monarch Mills, that he had the background and experience necessary to be the acting administrative operating head of the Darlington Manufacturing Company and made a recommendation to the Board of Directors that they employ him on that basis.

Q. I see.

Now in getting people to fill jobs such as that of treasurer at Darlington, do you attempt first to see if there is anybody in any of the other D-M Mills who can fill that position before going outside? A. Well first of all I think that this is the only experience that I have personally been connected with where when a position of treasurer came open the position was not filled by promotion from within the specific company where the opening occurred.

Q. Well how about as to the general manager's post?

Let me show you a news clipping of the Daily News Record, 11-8-56. A. Yes, sir.

Q. According to this clipping, James M. Bailey, who was a vice president at Judson Mills was named in addition as General Manager of Gerrish Milliken Mill. A. Yes, sir.

Q. And Garland G. Simmons in addition to his duty as [3195] Treasurer and Director of Drayton was named General Manager of Lawrence Mills? A. Yes, sir.

Q. Did such double posts some time happen? A. Mr. Allen Sibley was responsible for the management of all of those four mills. And each of these men were working for him, before and after.

Q. Allen Sibley is the Treasurer of what mill? A. Allen Sibley is the Treasurer of Lawrence. He was the treasurer of Drayton before Mr. Simmons became Treasurer. And he is vice president of Cot-Wool Manufacturing Company.

Q. All right. At the time of 11-8-56 when this notice was put in the paper—— A. He was treasurer of Drayton.

Q. Simmons was Treasurer of Drayton? A. No. Mr. Sibley was. And Garland Simmons was named general manager, I believe.

Excuse me. I am reading from the wrong place. Yes, he was.

Q. Simmons was treasurer of Drayton, and he was named as General Manager of Lawrence? A. That is correct.

Trial Examiner: Did you say that Mr. Allen Sibley—well, what is his connection with these four mills?

The Witness: He is Treasurer of—I think at that time [3196] he was treasurer of—of the Lawrence Mills. He was vice president of Drayton Mills. And he was vice president of Cot-Wool Manufacturing Company.

Trial Examnier: Do both Judson and Gerrish Milliken Mills—are both of those subsidiaries of Cot-Wool?

The Witness: The Judson Mills is a subsidiary of Cot-Wool.

Q. (By Mr. Dyer) How about Gerrish, Milliken Mills? A. Gerrish Mills is part of the Pacolet Manufacturing Co.

Q. It has no relation to Cot-Wool? A. No, sir.

Trial Examiner: Well is there any relationship to explain the appointment of Bailey who was vice president of Judson to be General Manager of Gerrish Milliken Mills?

Mr. Updike: That was of Lawrence, wasn't it?

The Witness: To answer your question: Mr. Allen Sibley was vice president of the Pacolet Manufacturing Company in charge of the Gerrish Milliken Plant.

Trial Examiner: We didn't have that. Sibley was also vice president of Pacolet.

The Witness: Pacolet Manufacturing Company, yes, in charge of the Gerrish Milliken Plant, which runs filament synthetic fabrics similar to the filament synthetic fabrics manufactured at Judson.

* * *

[3205] Q. (By Mr. Dyer) Mr. Milliken, in regard to Mr. Nicholson, [3206] Mr. Nicholson was first employed by Darlington in 1938, is that correct? A. That is what Mr. Oeland wrote to Minot Milliken, yes.

Q. From 1938 to 1941, while Mr. Nicholson was employed as treasurer of Darlington, he was also employed by Excelsior Mill; is that right? A. Mr. Oeland says so. That antedates any contact that I had with Mr. Nicholson. But I do know from the record that I have studied of the Excelsior Mills, that that mill went through bankruptcy

and was not in operation at all for some time during that period.

* * *

[3209] Trial Examiner: General Counsel's N-77 is received.

* * *

Q. All right.

There are various topics covered in those various two [3210] pages: sales for period, profits for period, with comments; estimates of sales and profits for next three periods: number of weeks production on order; inventory of cloth: planned operating schedule; and long or short position on raw materials. A. Yes, sir.

Q. Now in the period reports that you received from Darlington, were these reports always set up the same way? A. Generally, yes, sir.

Q. Now, in the period report you received from other mills, what differences did they make in the schematic plan of the report?

* * *

The Witness: Well the reports I got were always in the form of a letter like this.

Q. (By Mr. Dyer) Well, what I am referring to is: Was this form set up as something that the other mills followed too? A. Well I didn't consider this a form.

Q. Well there are various topics which are covered in it? A. Yes, sir.

Q. Were the same topics covered by all the other reports? A. They were to the extent that there was any comment to be [3211] made on these topics.

* * *

[3214] Trial Examiner: I don't know whether Mr. Dyer wants this information. But referring to the period reports from other mills, did they have the same topics? Look at the last page here, for example.

The Witness: Yes, they did.

Trial Examiner: Is that what you were getting at?

Mr. Dyer: Yes, sir. I thought that was the answer I was getting. Where they had no comments they made no comments with regard to those topics.

The Witness: That is correct.

Trial Examiner: I think the difference is: Your question was whether the same topics were covered in the reports. The witness is telling us that the same topics were listed.

Mr. Dyer: Yes, sir.

The Witness: That is right.

* * *

[3216] Q. (By Mr. Dyer) Mr. Milliken, did you check on Mr. Nicholson's employment back from 1938 to 1941? A. Yes, sir. I found Mr. Nicholson in Darlington. He advised the Excelsior Mills was set up as a hosiery operation by his father himself, his family; and that at the time the company became insolvent it had three operations; a full-fashioned hosiery operation which was being sold through a firm in New York called Sutton, Rommery and Nicholson. That it had a mercerized half-hose operation, the product of which was being sold through brokers and

agents; that it had a sheeting fabrics' operation which had been added in the 20s.

It was first a wide sheeting operation. And then they sold the machinery to the Spring Mills and—they sold the looms, and put in narrow looms and made sheetings. This product was sold in fact through Deering, Milliken and Company.

As best he can remember it, the dollar volume was about 50-50 as between the two hosiery operations and the sheeting operations. He advises he never went off the payroll of [3217] Excelsior Mills which was owned by his family from 1914, I think it was, when he started, until the time it was dissolved, and that he was being paid there while he was at Union Buffalo and when he went to Darlington.

At the time he went to Darlington in 1938 he remembers that his salary at Darlington was approximately $5500 a year and his salary from Excelsior $4500.

> Mr. Updike: What about the stock ownership?
>
> The Witness: He advised it was owned principally by his family and by a lot of other stockholders. He does not believe that any Milliken or any company in which a Milliken had a majority interest held more than a token amount of the stock of the Excelsior Mills.

Q. (By Mr. Dyer) Was that true through 1949? A. Yes, sir.

Q. Was the company thereafter reorganized? A. As I remember it roughly, when the company became insolvent, it owed Deering, Milliken and Company approximately 250,000 over and beyond its ability to pay.

Q. And did Deering, Milliken thereafter take that money out in stock? A. No, sir.

Q. Well how did Deering, Milliken come to—I think you stated previously that Excelsior was wholly owned by Cot-Wool at the present time, is that right? [3218] A. It is today, yes, sir.

Q. When did that situation become effective? A. That is a long involved story, and one did not go into the other in that form. If you want me to go into it I will be glad to.

Q. What I was trying to get at was: Was it subsequent to 1941? A. Was what subsequent to 1941?

Mr. Updike: When Excelsior went into Cot-Wool?

The Witness: Much subsequent to, yes, sir.

Mr. Dyer: All right.

The Witness: And after a number of intermediate reorganizations, yes, sir.

Mr. Dyer: All right.

Q. (By Mr. Dyer) Prior to Mr. Nicholson's coming to work at Darlington, he had not worked for any mill which was in the majority owned by a Deering, Milliken interest, is that right? A. That is correct.

* * *

[3219] Q. (By Mr. Dyer) I was asking you whether there was interchange of top supervisory personnel among the rest of the D. M. mills during 1955-1956?

Mr. Updike: Maybe the bothersome word is "interchange"?

Mr. Dyer: Well, did personnel from one mill of D. M. go to another mill during those periods; top supervisory personnel? That would mean general managers, treasurers, et cetera.

Mr. Updike: You mean management?

Mr. Dyer: Yes. General managers, et cetera. Persons who would have direct control over a mill?

Mr. Dyer: For instance, Mr. Asnip?

The Witness: Mr. Asnip did go from—he was employed at the Lawrence Mills and was offered the job of manager of MacCormack and Johnston Worsted Operations, and he accepted it, yes, sir.

Q. (By Mr. Dyer) He had been General Manager at Lawrence, is that right? A. Yes, sir.

Q. Were there others that similarly moved during the period——

[3220] Trial Examiner: Is MacCormack and Johnston Worsted one of the Cot-Wool organizations?

The Witness: They were wholly owned subsidiaries of the Cot-Wool Manufacturing Corporation, yes, sir.

I think that Mr. Fisher who was superintendent of the Gerrish Milliken mill was offered the job of manager of the Abbeville mills.

Q. (By Mr. Dyer) Did he accept? A. And he accepted, yes.

And there may have been others.

Q. All right.

Now, going back just a trifle further than that, during 1950-1951, et cetera, some mills were started. I believe the Hatch Mill was one. Gerrish Milliken was another. Was that started about that time? A. In the early—some time between seven and ten years ago, yes, sir; or five and ten years ago.

Q. When new mills were built which subsequently sold through Deering, Milliken, was top management—well I don't know what word to use—transferred or placed at these new mills?

Trial Examiner: Were they obtained?

Mr. Updike: Or gone to work for?

Q. (By Mr. Dyer) Where did these new mills obtain their top management?

[3221] I think there were approximately about five mills built during that period. Isn't that true? A. Yes, there were.

Well I will just have to take a few minutes and go back on each one of them if I can.

Q. Maybe this will help you. This is a news clipping from the Journal of Commerce.

(Document handed to the witness)

Mr. Updike: Do you remember the date of that?

The Witness: 1-31-49 it says.

Well, the first plant that it has reference to is the Clemson Plant of the Excelsior Mill Corporation, the unit completed in 1945 making precision rayon tire cord.

Mr. D. D. Quillian was hired to be the manager of that plant; and he came from the General Tire and Rubber Company.

Q. (By Mr. Dyer) All right. A. The next mill mentioned here is the Johnston Mill. And the fellow—and I forget his name today—who was made manager of that plant—he is no longer with us—was at that time employed by the Deering, Milliken Service Corporation in charge of some industrial engineering aspect. And so was the man

in charge of the MacCormack operation, the fellow named Fred Thompson.

There was then built the Gerrish Milliken Mill. And the directors of Pacolet Manufacturing Company asked Allen Sibley [3222] to have general responsibility for that. And he hired a man from the Amerotron Organization to be General Manager of the plant at that time if my memory is correct.

Mr. Updike: Amerotron is a—is an American Woolen Company?

The Witness: I am sorry. From Textron.

When the Hatch Mill was built——

Mr. Updike: Is it clear that Textron is in no way connected or associated with Deering, Milliken?

The Witness: That is right.

When the Hatch Mill was built, the manager—it was a wholly owned subsidiary of the Cot-Wool Manufacturing Company, as was the Excelsior Woolen Mill; and the manager in charge of Excelsior Woolen Mills had the responsibility, and he selected a man from the Woolen Operation at Union and put him in charge of the Hatch Mill Corporation.

Mr. Dyer: Does that complete your answer?

Mr. Updike: You have covered four.

The Witness: I think I have done more than that. MacCormack, Johnston, Clemson——

Mr. Updike: MacCormack and Johnston go together.

The Witness: No. They are two separate mills.

It is the tire cord plant; it is owned by the Excelsior Mills.

Mr. Updike: Clemson, that is, you mean?

The Witness: Yes, sir.

[3223] Excelsior Mills, when it started up after Mr. Nicholson left and as a woolen mill was operated by a man who came from Marth Mills, which is a mill owned by B. F. Goodrich and Company. I think that covers them, Mr. Dyer.

Mr. Dyer: All right.

Q. (By Mr. Dyer) Now subsequent to those various mills starting up that way, have there been changes of top personnel through them? I think we have indicated that Mr. Bailey made some changes. A. That is right.

Mr. Updike: Well now we have covered 1954-1955, and we have covered all the new mills in the 1949 through 1951 period. Haven't we covered the relevant area?

Mr. Dyer: That is what I am trying to get at. I think we have covered there some changes of personnel since the ones Mr. Milliken has just mentioned.

The Witness: Yes. For instance when Mr. Quillian left the Excelsior tire Cord operation and then went to Chicapee Manufacturing Company, a Mr. Ernest Defore, who had previously been working at the Calloway Mills came. A man was employed to head up the consolidated operations, the two operations of MacCormack and Johnston, a man named "Red" Hines—his initials are "E. E." I think—was hired from the Calloway Mills to head up that organization.

Trial Examiner: Is this Calloway in Deering, Milliken?

[3224] The Witness: No, sir. No connection.

* * *

[3228] Q. (By Mr. Janes) Mr. Milliken, is it your testimony that in 1955-1956 there were 27 plants and 17 corporations which we have referred to as the D. M. Mills? A. Yes, sir.

Q. Mr. Milliken, is it true that Deering, Milliken and Company, Inc. is the exclusive sales agent of the various D. M. Mills? A. In 1956, yes.

[3229] Q. And as such functioned as the sole marketing outlet for the D. M. Mills in 1956? A. Either Deering, Milliken or Milliken Woolens and I think Milliken Woolens was in existence for part of that time.

Mr. Updike: Mr. Minot Milliken testified to that.

Mr. Dyer: Milliken Woolens is a wholly owned subsidiary of Deering, Milliken and Company.

* * *

[3232] Q. (By Mr. Janes) Mr. Milliken, is it a true statement that through the industrial engineering facilities —I am on your page 238——

Mr. Schoemer: Thank you.

Q. (By Mr. Janes) —facilities of the Deering, Milliken Service Corporation, Deering, Milliken and Company, Inc. maintains a uniformity of work assignments? A. It is not.

Q. In the D. M. Mills? A. It is not.

* * *

[3234] Q. (By Mr. Janes) Did any of the companies or corporations with which you are connected have a labor union problem at Gaffney Manufacturing Company in 1947? A. Are we talking now about 1947?

Q. That was my question, yes.

* * *

[3236] The Witness: If 1947 is the date, at or about that time the employees of the Gaffney Manufacturing Company went out on strike.

Mr. Updike: Now is that an answer with respect to Gaffney Manufacturing Company or some of the other corporations with which this witness is connected?

The question is so compound it must be very difficult to understand the answer.

Trial Examiner: Did any of these other corporations——

The Witness: Have labor trouble at Gaffney? No, sir.

Q. (By Mr. Janes) At Gaffney Manufacturing Company, there was a strike, was there not? A. There was, sir.

Q. Do you remember how long that strike lasted? A. No, I do not know when the Union called it off.

Q. Do you recall—strike that.

Was the plant closed, and was the corporation liquidated? A. The plant, Mr. Janes, I think, was closed because of unwillingness on the part of workers to work for a period of approximately six to nine months.

Q. I don't quite understand the answer. Was that a request that was made by the company to the workers? A. No, sir.

The workers were on strike and refused to work.

[3237] Q. And thereafter the plant was closed; is that right? A. Right. And in answer to the second part of your question, approximately 40 to 45 percent of the equipment of the Gaffney Manufacturing Company was sold.

Q. How soon after the termination of the strike was the equipment sold?

Mr. Updike: If at all.

Trial Examiner: Was it after the termination?

Q. (By Mr. Janes) Was it after the termination that the equipment was sold? A. No, sir.

Q. Can you recall from the point of departure of the termination of the strike how many—or how long before the termination was the equipment sold? A. As I recall it, Mr. Janes—and I was only a director of the Gaffney Manufacturing Company—Mr. Siskind of the Crescent Corporation, a dealer in used machinery purchased for export approximately 35 or 40,000 spindles, and complementary cards and looms to go with it.

After the strike had been in operation for approximately six to nine months, when he employed personnel to go in and remove the equipment from the plant——

Trial Examiner: When you say "personnel" you mean the former mill personnel?

The Witness: People he picked up in Gaffney. I don't know whether they were former mill personnel or not, [3238] Mr. Examiner.

Trial Examiner: All right.

The Witness: When he and this group went in to start removing the machinery, it is my recollection that a number of people who had been former employees of the Gaffney Manufacturing Company said they wanted to go to work and work was offered to them, and they went to work. And I believe that the strike was officially called off perhaps one year or so following that event.

Q. (By Mr. Janes) About how many employees were employed at this mill, Mr. Milliken? A. At what time, Mr. Janes?

Q. Well, before the strike. A. I don't know.

Q. You have no recollection whether it was about a thousand or not? A. I would think it was about a thousand. But I don't know specifically.

Q. Do you recollect which Union was involved in this strike? A. No, sir, I do not.

Q. If I tell you that it was the Textile Workers Union of America, would that refresh your recollection? A. If you told me that that was the fact, I would accept it.

* * *

[3240] Q. Were there any contracts executed between the company and representatives of the employees? A. Following the start up of the mill?

Q. Yes. A. There was not.

Q. Mr. Milliken, in Dallas Manufacturing Company at Huntsville, Alabama, was that a plant of about 800 employees? A. I think that is approximately correct, yes.

Q. Was that a mill that might be designated as, we have, a D. M. Mill? A. It was a mill whose product was sold through Deering, Milliken and Company.

Mr. Updike: What was the date of that?

Mr. Janes: I will get the date in a moment. Mr. Updike.

Q. (By Mr. Janes) Do you remember whether there was a strike at Dallas Manufacturing Company in 1947? A. At or about that time at Dallas Manufacturing Company.

Q. Had there been a union contract prior to that time? A. There had.

Q. Was it a single contract or was a series of contracts over a period of time—— A. Mr. Janes, I wasn't the manager or responsible for the [3241] operations. And I am not sure whether—I believe there had been a number of contracts. Over a period of time.

Q. Was that mill ultimately closed? A. The Unions went out on strike, yes, sir.

Q. Did the Unions go out on strike in December 1947? A. I don't know what date they went out on strike.

Mr. Updike: He has already testified that about December 1947 the workmen went on strike.

Trial Examiner: About December, did he say?

Mr. Updike: Of 1947. That is what I got.

The Witness: I am accepting Mr. Janes' dates as he gives them to me as being at or approximately the dates of the events he is describing.

Q. (By Mr. Janes) Was the mill closed after December 1947? A. It did not operate after the people working in the mill went out on strike.

Q. Was the equipment of the mill sold? A. The equipment of the mill was sold.

Mr. Updike: When?

Q. (By Mr. Janes) When was that? A. I do not have the date in my mind, Mr. Janes.

Q. I have reference to the date of April 1949? Would that be about right? A. A year and a quarter after this period we are talking about, yes, sir. If that is the correct date.

[3242] Q. And was the strike in existence at the time of the closing of the mill? A. That is what closed the mill.

Q. Mr. Milliken, I refer you to Madison Woolen Company. Was that a mill that might be referred to as we have referred to in this proceeding as a D. M. Mill? A. To the extent that it sold its products through Deering, Milliken and Company, it was.

* * *

Q. (By Mr. Janes) Do you recall that a labor contract was signed with the Madison Woolen Company by the Textile Workers Union of America in August 1958? A. I was not in the Textile business at that time. So I will have to take your word for it.

Q. Do you recall that there were continuous contractual relations from 1938 to a period nine years thereafter? That would be——

Trial Examiner: 1947.

Mr. Janes: 1947, yes.

[3243] The Witness: I don't know whether they were continuous or interrupted, Mr. Janes.

Q. (By Mr. Janes) When did you become a participant in the affairs of Madison Woolen Company? A. I became a Director, I believe in 1940.

Q. Did you hold any other office in that corporation thereafter? A. I subsequently became Treasurer, I believe, Mr. Janes.

Q. When was that, Mr. Milliken? A. I don't know the date.

Trial Examiner: Well, with respect to—let's see if we can fix something there.

Mr. Janes: I was going to do it this way, Mr. Trial Examiner.

Trial Examiner: All right.

Q. (By Mr. Janes) Was the mill closed at any time thereafter?

Mr. Updike: After 1940?

Mr. Janes: Yes. That is the last date we have.

Mr. Updike: It seems, sir, I must renew my objection.

Trial Examiner: "After" may have been last year, Mr. Updike. Let's see when it was.

Mr. Janes: Was the mill closed in September, 1947?

The Witness: That is the time when the mill ceased operations, I will accept your word for that as being the [3244] date.

Q. (By Mr. Janes) When had you become Treasurer of this mill, Mr. Milliken? A. I can't remember, Mr. Janes.

Q. Well, from the point of the closing of the mill could you fix a number of years? A. No, sir. I have no recollection now as to dates.

Q. Were you treasurer at the time of the closing of the mill? A. I believe that I was a treasurer of the mill. Certainly I was an officer at the time the mill ceased operations due to a strike.

Q. And had the equipment been sold? A. Had it been sold?

Q. Prior to—strike that.

Q. Was the equipment of this mill also sold? A. After the mill ceased operations the equipment was subsequently sold.

Q. Do you know how long the strike took place? A. No, sir.

Q. Could you hazard any approximate opinion? A. Well there were a number—the reason I am having difficulty with this is that there were a number of strikes that took place at Madison.

Q. Long before the closing? [3245] A. No, sir.

Trial Examiner: Well, this isn't quite clear: Did the mill cease operation and then resume operations when the strikes were terminated.

The Witness: Mr. Buchanan, as best I remember it—and my memory is subject to all kinds of corrections on investigating the facts—I had no idea we were going to discuss this—shortly after I went into the textile business——

Trial Examiner: That was about when?

The Witness: 1939. The fall.

—there was a time—there was a strike at the plant of the Madison Woolen Company in Madison, Maine; the duration of it I do not remember. Say, two or three months.

Following that, the plant started operations. Then it an attempt to make the costs of this mill competitive, as I testified the other day, the directors authorized the purchase of new looms. When these new looms arrived and the employees were askd to operate four looms per weaver, which was the work assignment in all of the mills of competition in the State of Maine, they refused to do so. And they walked out.

The mill never reopened after that, and the machinery was subsequently sold at auction.

Q. Is it true that the Union involved at Madison Woolen Company was also the Textile Workers Union of America? A. I do not know.

[3246] Q. If I were to state that to you, would you accept my statement for your testimony? A. Mr. Janes, I will be glad to.

The reason I am not answering that is that I know there have been or are, or whatever, two unions in this field. And I do not know which is which.

Q. Yes. But the other Union did not come into existence until 1951. A. I didn't know that.

* * *

Q. (By Mr. Janes) Do you know about how many employees there were at the Madison Woolen Company while they were in operation? A. I believe it was about 500.

* * *

[3247] Q. (By Mr. Janes) Did the Lockwood Dutchess Inc. sell through Deering, Milliken and Company, Inc.? A. It did.

Q. Do you recall, Mr. Milliken, whether there was a strike in September 1955 at Lockwood Dutchess Plant? A. Assuming again——

Q. At Waterville, Maine? A. Assuming again that that is correct, that that is the correct date, there was a strike.

Q. And was the plant closed after the start of the strike? A. It was closed by the strike.

Q. And was the equipment sold? A. The equipment was sold.

Q. Was the corporation liquidated? A. I believe it was.

* * *

[3248] Q. (By Mr. Janes) Mr. Milliken, do you recall the strike at the Lockwood Dutchess Plant at Wappinger Falls, New York?

Mr. Schoemer: Excuse me, Mr. Janes, I have been following along in Mr. Zinny's offer of proof while you were asking these questions. I note at page 241 speaking of Lockwood Dutchess he said "The union involved was the United Textile Workers of America."

Is that the other union?

Mr. Janes: That is conceded that that is the other union.

* * *

[3249] Q. (By Mr. Janes) Mr. Milliken, do you remember the organization campaign by the Textile Workers Union of America at the Lockwood Dutchess Plant at Wapping Falls? A. Do I remember that there was one?

Q. Yes. A. Was this the Textile Workers Union or the UTW that Mr. Schoemer referred to?

Q. This was the Textile Workers Union of America? A. As I remember it, there were several campaigns at Dutchess Bleachery Plant of the Lockwood Manufacturing Company.

Q. At Wappinger Falls? A. At Wappinger Falls, yes.

Q. Let me ask you this: Do you recall a petition being filed with the National Labor Relations Board for representation election filed by the Union which I tell you is the

Textile Workers Union of America? A. I believe I was told of that, yes.

Q. Was that approximately about June 1, 1955? A. I do not know, Mr. Janes.

[3250] Trial Examiner: Did you say a petition was filed with the Board?

Mr. Janes: A petition was filed according to my information on June 1, 1955.

Trial Examiner: Thank you.

Q. (By Mr. Janes) Did the stockholders of this company vote to liquidate this corporation and close the mill? A. Mr. Janes, the Dutchess Bleachery was a division of the Lockwood Manufacturing Company.

Q. Could you answer my question about the closing of the plant and the dissolution of the corporation?

The Witness: May I have the question read?

(The pending question read by the reporter.)

Mr. Updike: Well I think the answer is responsive. Apparently this particular plant and the one in Waterville, Maine, were unified as part of a total corporate picture. And he has already testified to the liquidation in Waterville, Maine.

The Witness: I believe what happened here, Mr. examiner, was that the Dutchess Bleachery finished all of the sheeting made by the Lockwood Division of the Lockwood Dutchess Corporation.

In addition, it had other customers——

Trial Examiner: When you say "the Lockwood Division" you mean the one in Waterville, Maine?

[3251] The Witness: Yes.

In addition, it had a lot of independent converter customers for whom it finished. Such as DuPont and others.

Mr. Updike: May I interrupt a moment?

Both Mr. Buchanan and Mr. Schoemer think you are talking about Waterville. And I think you are speaking about Wappinger Falls.

Trial Examiner: No. He is speaking about Wappinger Falls. The sheeting was made by Lockwood in Waterville.

Mr. Updike: Correct. And the bleaching was done at Wappinger Falls.

The Witness: After the plant at Waterville was closed by the strike, an attempt was made by the management of the Lockwood Dutchess Company to operate the Bleachery on the business it could solicit from others other than Lockwood and make an economic go of its operation.

They found that it was not possible to operate after the loss of such an important source of business; and the Directors subsequently voted to cease operation and liquidate the operation.

* * *

[3254] Q. Mr. Milliken, on October 12, 1955, did you present an address to the—well, before the State Fiscal Survey Commission in Columbia, South Carolina? A. I made an address before the State Fiscal Commission on a date. And if you tell me that that is the date from reading it, I will accept that as the date.

* * *

Q. (By Mr. Janes) Do you recall making the following statement in that address: And I believe you were referring to the subject of team work pays dividends. "The South Carolina Textile Worker has recognized this and that his mill can not stay in business and furnish full employment unless he offers a full day's work for a full day's pay."

Do you recall that? A. Yes, sir.

Mr. Updike: I will concede that that is a correct quotation from an address made by Mr. Milliken on that date.

Q. (By Mr. Janes) Did you also at that time state: "This same intelligent attitude can not be said to be held by the New England workers who have been influenced and badgered [3255] by CIO propaganda to resist all managment changes and to throw road blocks in the way of making improvements that will lower costs."

Mr. Updike: I will concede that that is also a correct quotation, about 200 words and 35 lines away from the last preceding quotation.

Mr. Janes: Will the same concession be made as to the following statement:

"That these facts are true"—and it refers to the subject of cooperation builds confidence—"I note—"—

Mr. Updike: This being a different subject from the preceding one?

Mr. Janes: That is right.

"That these facts are true I know from bitter experience; for three weeks ago I went to Waterville, Maine, and was present at the auction of all the textile equipment which included 50,000 spindles in the Lockwood Mill which has been affiliated with Deering, Milliken for many years."

Will the same concession be made?

Mr. Updike: That is a correct quotation, again some distance away from the last preceding one.

* * *

[3256] Q. (By Mr. Janes) Mr. Milliken I ask you whether in this address you stated "The results of this difference in attitude are manifold. First of all, while South Carolina mill owners have poured money into new machinery and owners of New England mills have hesitated to put money into new machinery when they can not get the full benefit from such investments, and because their unit costs are thus higher, they do not find it possible nor profitable to run their mills six days during the week.

"And thus they deprive the workers of an opportunity to earn the six-day pay at time and a half."

Mr. Janes: Will it be conceded that that is stated?

Mr. Updike: I am trying to find where you are, sir. Are you still under the same caption?

Mr. Janes: No pagination. It is under "A Co-operation Builds Confidence."

[3257] Mr. Dyer: That is the section that precedes the preceding quotation; is that right?

Mr. Janes: Yes.

Mr. Updike: Yes I have found it.

* * *

[3262] Q. (By Mr. Janes) Mr. Milliken, were you an officer in the Woolen Mill at Madison, Maine? A. I was.

Q. What office did you hold? A. Treasurer. I believe. I would have to check that. I think that is correct.

* * *

Q. (By Mr. Janes) Mr. Milliken, did you state in your address "In addition to the liquidation at Lockwood, we had [3263] a similar experience in a woolen mill at Madison, Maine? A. I did.

Q. "There we had purchased one quarter of a million dollars worth of new looms but were told by the Union when they arrived that the weavers would not handle any more of the new looms than they had of the old, regardless of the fact that the amount of work was more than halved. The result is that today our woolen operation in South Carolina was more than double what it was. And the Madison Mill is empty of textile machinery. Today 100 of our former employees are employed there making wooden novelties at an average wage of $1.10 an hour when we were there. The landscape of New England is dotted with empty textile mills which can not find manufacturing tenants."

That was part of your address, was it not? A. It was.

Q. Turning to the next page, Mr. Milliken, under "The right mental attitude", will you state whether this also was part of the address?

I am going to read it.

"The importance of the worker's attitude can not be too heavily underscored in our thinking. It was absent in a mill that we operated in Huntsville, Alabama, with the result that we were unwilling to invest in new machinery, and the mill was liquidated in 1947.

"That we were not alone in our thinking is proven by [3264] the fact that the Lincoln Mills, also in Huntsville, has just this month decided to cease operations."

Did you make this statement at that time? A. I did.

Trial Examiner: The Lincoln Mills, I take it, is not one which sells through Deering, Milliken?

Mr. Dyer: That is right.

* * *

Q. (By Mr. Janes) Mr. Milliken, are there any D. M. Mills [3265] that have contractual relations with a union?

Mr. Updike: You mean were there in 1955-1956?

Mr. Janes: Were there during the period 1955-1956?

The Witness: Yes there were, Mr. Janes.

Q. (By Mr. Janes) In what plants? A. Lockwood mills.

Q. That was in the early period of 1955? A. That was in 1955 to whatever time——

Q. Was that the main plant? A. Yes, sir.

Q. And that we have already considered as the plant that was liquidated in September 1955 following the strike? A. That is the same corporation. Same plant.

Q. And thereafter did the Lockwood Mills have any union in its mill?

Trial Examiner: It wasn't a mill.

The Witness: It was liquidated.

Q. (By Mr. Janes) In the year 1956 were there any D. M. Mills? A. By D. M. Mills you refer again to——

Q. The same, yes. A. Mills that sell through Deering, Milliken and Company?

Q. Yes. A. There were not.

* * *

[3266] Q. (By Mr. Janes) Was there any bargaining with any group in any of the D. M. Mills in 1956, Union or otherwise?

Mr. Updike: With respect to employees, I hope you mean?

Mr. Janes: With respect to employees, yes.

The Witness: I personally had nothing to do with any labor relations at any mills; so I do not know of any myself and none that I can think of of what you are describing was brought to my attention by anybody.

* * *

[3271] Q. (By Mr. Updike) I draw attention to the provisions of Article 4 of the by-laws under the caption "Duties of Officers".

With respect to the President it says, Section 1 "The President shall have general supervision over the affairs of the company. He shall preside at all director's meetings. He shall report in writing to the directors from time to time or as may be required by them. In the event of his absence or disability, the vice president shall act in his place."

Now, Mr. Milliken, was there a vice president at Darlington during those years? A. I don't believe so, Mr. Updike.

Q. According to the record in Exhibit General Counsel's B-10, Darlington had three officers, a President, a Treasurer, and an Assistant Treasurer. Is that in accord with your recollection, sir? A. Yes, sir.

Q. I now return to the by-laws.

"The treasurer. Section 2: The Treasurer shall have charge of the books and of all financial and general business of the company under the supervision of the Directors. And he shall appoint such agents, superintendents, and others as may be needed and assign their respective duties and fix their compensations, each of whom shall be removable at his pleasure."

"He shall receive and pay out money and, together with [3272] the President, make and negotiate such promissory notes and bills of exchange as the operation of the company may require. He shall at the annual stockholder's meetings and whenever required by the Directors, submit full or partial statements of the affairs of the company.

"The treasurer and Assistant Treasurer shall give bonds in amounts determined and with security satisfactory to the Directors. Stock certificates under the seal of the company shall be signed by the President and Treasurer or by the Treasurer and Assistant Treasurer. The treasurer shall affix the seal of the company to all other documents requiring it, and keep a record of all stock issued and transferred."

Q. Now, Mr. Minot Milliken has testified earlier in these proceedings that with respect to the office of the Treasurer of a mill corporation in the textile business the Treasurer is comparable to the President of other corporations. And that the President of such a Textile Mill Corporation is comparable to the Chairman of the Board.

Were you present when he testified to that effect? A. I believe so.

Q. Now, I show you what purports to be the employee handbook at Darlington, and I ask you if you can identify it, sir? A. Mr. Updike, I saw this for the first time when it was brought to the hearing the other day.

[3273] Q. By Mr. Oeland? A. By whoever brought it. And I understand from him that this is the handbook of the Darlington Manufacturing Company.

Mr. Updike: Subject to connection through the testimony of Mr. Oeland I offer it as Respondent's Exhibit N-1.

* * *

[3275] (The document above-referred to was marked Respondent's Exhibit N-1 for identification and received in evidence.)

Mr. Updike: Specifically, Mr. Buchanan, I first draw to your attention, sir, the page captioned "Our Organization."

Trial Examiner: Are they numbered?

Mr. Updike: Yes, sir. This page is in color, or part color. And it does not bear a number. But the page before it is seven and the page following it is nine. So [3276] we will call this one eight, sir.

Trial Examiner: All right.

Mr. Updike: I draw specific attention to the chart showing at the top of the organization; as the head of it, so to speak, the Treasurer. Then under him the various people connected with the mill.

Q. (By Mr. Updike) Now, Mr. Milliken, as you heard, this particular handbook bears a date in 1948.

With reference to this organization chart can you state whether in 1955 and 1956 there were some differences as between that organization chart and the organization as it existed in those years? A. I believe——

Q. I didn't ask you what the changes were. I asked you were there some changes? A. There were, Mr. Updike.

Q. Was there any change with respect to the position of the Treasurer at the top of the organization? A. There was not.

Q. The specific changes we can get from Mr. Oeland's testimony.

Q. I also notice that immediately preceding—or immediately succeeding the index in the beginning a letter from W. S. Nicholson, Treasurer.

I ask you if that is the Mr. Nicholson who was the subject of your testimony earlier this afternoon? [3277] A. That is correct, it was.

Mr. Updike: Because this booklet is addressed to the rank and file, sir, I would like to read from this letter from Mr. Nicholson as it appears here.

"Dear Friend: Welcome to Darlington Manufacturing Company. Our best wishes for your success and happiness. We hope you will be with us for many years.

"This handbook 'Darlington Defined' will tell you many things about your company and mine. Read it carefully. Keep it. As it is a sort of history and a guide and will be useful to you. We can't put everything in a booklet like this; so don't hesitate to ask questions of your overseer and second hands. Let's work together. Let's make the best cloth at the lowest possible cost. Then we can stay in business and provide good jobs for another sixty-five years. Sincerely yours."

Mr. Janes: Does it say another 65 years?

Mr. Updike: Is that what I said? For another 65 years, yes.

Q. (By Mr. Updike) Mr. Milliken, you have been President of Darlington since about when? A. I believe since about 1945, sir.

Q. During that period time and from then on down to the time of the liquidation and immediately following it, in 1956 and 1957, did the stockholders hold regular meetings? [3278] A. They held a meeting every year.

Q. And where were those meetings held? A. They were held in the office of the Darlington Manufacturing Company at Darlington, South Carolina.

Q. Were minutes kept of those meetings? A. They were.

Q. During the course of those meetings, generally speaking what topics were covered? A. After it had been established that there was a quorum present, the first order of business was generally the reading of the minutes of the previous stockholders' meeting, which were then either approved, amended or disapproved.

There was then, as I remember it, a report from the Treasurer to the stockholders made by the Treasurer on the operations of the mill, commenting on the operations of the mill for the preceding year. Generally questions were asked of the Treasurer at this time, and answers were given until the questioner was satisfied.

At these stockholder's meetings, the stockholders employed the auditors, the independent auditors, who would audit—or who would be asked to audit the books of the company for the ensuing year. At these meetings, the question of whether the stockholders wished to renew the agreement with Deering, Milliken and Company to act as selling agent and factor for the company would be brought up and voted upon.

[3279] The Treasurer made a recommendation generally—reported to the stockholders on the amount of capital additions that had been made to the plant account of the company during the past year and I believe generally requested approval from the stockholders of amounts that had been approved by the Directors that he and the officers had recommended and been spent in the ensuing year and

which either had at the meeting held just prior to the stockholders' meeting been approved.

Also at that time the question of membership in the Institute of Textile Technology, when it came up for renewal on a 3-year basis, was brought to the attention before the stockholders, and they were asked to vote on whether they wished to become members, renew their membership, or not.

Q. That didn't occur each year? A. That occurred every third year.

Q. That occurred every third year since the first time? A. That is right.

The amounts that the officers and directors proposed be paid to the Deering, Milliken Service Corporation for their services for the ensuing year were brought up and approved.

Contributions to first the Deering, Milliken Research Trust and then to the Deering, Milliken Research Corporations for its activities came annually before the stockholders for them to vote upon.

[3280] Contributions to the Deering, Milliken Foundation for the stockholders on recommendation of the Board of Directors——

> Trial Examiner: Were they voted on?
> The Witness: And voted upon, yes.

I believe the question of whether the Darlington Manufacturing Company should belong to the National Cotton Council came before the stockholders. Or it may have been that this was something that was handled by the directors.

The stockholders, of course, were told what every action had been taken by the directors as regards the dividend.

And there was quite an important thing: The stockholders elected annually the directors of the company.

Q. (By Mr. Updike) Is that in general the pattern of the annual meeting of the stockholders? A. It was.

Q. During this period from the time you became President down through 1957? A. Yes.

* * *

[3282] A. The first order of business [at the directors' meeting] was the election of officers which was generally the first order of business that took place at the meeting of directors following the stockholders' meeting.

You understand, Mr. Updike, that there was also a meeting of the directors of the outgoing board of directors always held prior to the stockholders' meeting.

Q. Yes, sir. A. And the rates of compensation for the officers set at that time?

May I read the next paragraph, because it was typical.

Q. Well either read it or summarize it. If it is shorter to read it, let's have it read. A. "The president discussed the recommendations of the treasurer for a capital expenditure of $186,507."

"For the year ending November 26, 1955. After thoroughly discussing the matter as well as contemplating additional expenditures not recommended at this time but proposed, the directors approved the outlined capital expenditures and a treasurer's fund of $25,000 for capital additions to be [3283] made at the discretion of the treasurer without approval of the directors for the present year and an additional hundred thousand dollars to be made at the discretion of the officers of the company without approval of the directors in the present year."

I asked to read that because that was typical of the action taken by the directors.

Mr. Updike: With respect to capital expenditures.

The Witness: With respect to capital expenditures and authorizations to the treasurer of a treasurer's fund that he could spend for capital additions as he saw fit in the amount of $25,000 and the authorization of the Treasurer and the President to spend some specific additional amount of money for items that they might decide during the course of the year were spendable in the best interests of the stockholders of the Darlington Manufacturing Company.

Q. (By Mr. Updike) Very good, sir. Will you continue with the rest? A. The rest of the item has to do with the declaration of two quarterly dividends, one payable in February; one payable in May.

And it was at some time during this period the dividend of Darlington Manufacturing Company was changed from a semi-annual dividend to a quarterly dividend in the interest of spreading out the regular dividend over four payments rather [3284] than two.

And the action on the dividend, the next dividend, was commonly taken at that time.

The vacation pay plan of the corporation, the authorization of it, which was required by the Darlington Manufacturing Company's vacation pay plan, was approved at this meeting, and other meetings like it held at the same time of the year.

Mr. Updike: May I interrupt, Mr. Examiner, to remind you that there has been testimony and some exhibits introduced with respect to this through the witness Kable.

The Witness: There was action taken changing the date of eligibility from March to the preceding December 31st for the vacation pay plan of Darlington Manufacturing Company for subsequent plan years.

That was a special action that was taken at that meeting.

There was special action—you are just asking about regular action; is that right, repetitive action?

Mr. Updike: Yes. Repetitive action.

The Witness: Those are the only items that I see that were repetitive in nature.

Q. (By Mr. Updike) And would you say, speaking generally, that that exhibit is a fair summary of the regular procedure of the Board of Darlington year in and year out in the period while you were its president? A. I would have to add to that, Mr. Updike, that at the [3285] meeting that did take place before the stockholder's meeting, there were other things that were discussed which should also be included if I am to answer your question correctly, such as the——

Q. (By Mr. Updike) Please do so. A. Those items were the items that were approved by the Directors that I mentioned were approved by the stockholders that had first been discussed by the directors and brought into the stockholder's meeting as a recommendation from the Directors to the stockholders. And I don't think it is necessary for me to repeat those.

Q. No.

So that I understand it: at the director's meeting which immediately preceded the stockholder's meeting, certain recommendations to the stockholders were adopted and

were thereafter presented to the stockholders, is that correct? A. That is correct.

Q. Very good, sir.

Now, during the preceding ten or twelve years, were directors and stockholders' meetings regularly held of the Darlington Manufacturing Company? A. A stockholder's meeting was held every year, and generally at least three directors meetings were also held.

Q. In the course of each year? A. In the course of each year.

[3286] Q. Who kept the minutes of these meetings? A. The Secretary of the Company.

> Trial Examiner: It wasn't the Secretary, was it?
>
> The Witness: Well Mr. Oeland in this was elected Secretary-Treasurer.
>
> It says here that Mr. Oeland acted as Secretary for the entire meeting.
>
> I believe he either was or acted as the Secretary.
>
> Mr. Oeland: I was both.
>
> The Witness: Well, the Secretary kept the minutes of both meetings, Mr. Updike.

Q. (By. Mr. Updike) There has been testimony here with respect to Mr. Kable giving assistance to Mr. Oeland with respect to the drafting of minutes and revising of minutes.

Q. Did Mr. Kable attend these meetings of the Directors or of the stockholders? A. I can never remember Mr. Kable having been in attendance at any stockholder's meeting or any director's meeting.

Q. Now, during the period that we are talking about, was Mr. Oeland in addition to being a director of Darlington and an officer of Darlington, was he either a director

or an officer of Deering, Milliken and Company, or any of the companies that have been referred to here as the mills selling through Deering, Milliken and Company? A. No, sir, he was not.

[3287] Q. Was he an officer or a director of either the Research Corporation or the Service Corporation? A. No, sir, he was not.

Q. During that period of time when you were the President, and specifically with reference to 1955 and 1956, did you hire or discharge any employee, whether rank and file or otherwise, at Darlington, sir? A. No, sir, I did not.

Q. By whom in the period 1955-1956 was such hirings and dischargings done? A. Mr. Oeland, who was Treasurer and Administrative head of the Darlington Manufacturing Company.

Q. During this period of time, did Darlington have its own records of account? A. It did.

Q. Were any duplicate records of account kept at any other place than at Darlington? A. No, sir.

Q. Did it have its own bank accounts? A. It had four of its own bank accounts. Two in Darlington, one in Atlanta, and one at the Irving Trust Company in New York.

Q. Do you know who were the signatories on those accounts? A. No, I do not.

Q. In any event, I take it from your answer that you were [3288] not called upon to sign any checks on those? A. During that period of time?

I never signed for a bank account of the Darlington Manufacturing Company until after it went into liquidation and two signatures of officers were needed, and Mr. Oeland and I were the only two officers. And my signature was then affixed to a check.

Q. Do you know whether Darlington had its own stockholders records? A. Darlington had its own stockholder records.

Q. Where were those records kept? A. Darlington had its own stockholders and stockholder records.

Q. Where were those records kept? A. In the office of the company at Darlington.

Q. Are you familiar with the procedure where, for example, a stock transfer was to be made; who took care of that and who advised with respect to it? A. It is my understanding that—well, Mr. Oeland handled the transaction. It is my understanding that he had to transfer authorization papers checked by Darlington's Counsel to determine whether they were in order or not.

Q. Now, do you know the name of that Counsel who was so employed? A. I think that the official name was Paulling and James.

[3289] Q. Do you know where they were located? A. I believe they were located in Darlington.

Trial Examiner: Do you know them?

The Witness: I believe I have shaken hands with Mr. Paulling.

Q. (By Mr. Updike) How long ago was that, if you can remember? A. I do not remember.

Mr. Dyer: Possibly at the liquidation sale?

The Witness: I don't know. I never had any legal dealings with him.

Q. (By Mr. Updike) Do you know to whom Darlington turned for advice with respect to its real estate problems in Darlington? A. I believe it was to this firm of lawyers that Mr. Oeland turned.

Q. Now, Mr. Milliken, in the time that you were President of Darlington, did you ever arrange for or put into effect any transfer of any employee either to Darlington from some other concern with which you had some connection or out of Darlington to such a concern? A. No, sir.

* * *

[3292] Q. (By Mr. Updike) Now, Mr. Milliken, in speaking generally I think you have testified that one of the policies with respect to the Treasurer and the President at Darlington was that matters involving capital expenditure were to be referred to you or discussed with you.

Now, I show you a memorandum which has been marked "General Counsel's Exhibit N-47" which refers to another different area of policy; this one with respect to payroll deductions. And I ask you, sir, how did that policy come about with respect first of all to Darlington and then with respect to any other companies as to which it was in effect? A. Well, Mr. Updike, when I first started visiting the mills we have been talking about with my father, I learned that from discussions that there were numerous deductions being permitted on the pay checks of individuals who were working in the mills.

I learned, for instance, that it was practiced in a number of the mills to permit deductions for purchase of merchandise in what was known as the company store; that there was permitted deductions for the purchase of coal, and other things like that.

From my reading, et cetera, I felt that—or I had [3293] a conviction that this was a bad thing, because I learned that some of the employees in these mills were receiving a pay check—well, it was cash at that time—a cash payment of maybe a dollar or a dollar and a half at the end of the week's work because of previous authorizations that they had made.

I argued at that time with my father, and later with others that this was a bad practice, and that in fact a proper procedure as I saw it would be to have a situation where no payroll deductions of any kind would be permitted by the directors except where they were made mandatory by the Federal Government or the State and Local Governments. And since—ever since that time I have used what persuasive powers I have to the end of trying to bring about a result of there being no deductions of any kind on the payroll of any company with which I was connected so that the employee might after he received his pay, have full and final determination of what he wished to do with it.

And it was in this connection that I opposed in this letter of September 23rd General Counsel's N-47, the pressures that were put upon mill treasurers in the fall of the year to permit community chest deductions.

Another reason for this was that in instances where mills have permitted that, the community chest has generally tried to see to it that overseers and people in authority [3294] were the team captains.

And I have a conviction that it is unfair for a person who is working for somebody else to be asked by the person for whom he is working to make a contribution in order that the person for whom he is working may make a good record for himself.

Q. Even though the cause may be a worthy one? A. Even though the cause is a worthy one. And I think the community chest is a most worthy cause.

Q. Mr. Milliken, have you, as yet, succeeded in persuading all of the treasurers of all of the mills that we have sometimes referred to here as the D. M. Mills in keeping away from payroll deductions? A. No, sir.

* * *

[3297] JAMES MOORE OELAND was called to the stand as a witness, and having been first duly sworn, was examined, and testified as follows:

Trial Witness: You full name?
The Witness: James Moore Oeland.
Trial Examiner: Where do you live?
The Witness: My home address is Darlington. My business address is Clinton, South Carolina.

Direct Examination

Q. (By Mr. Dyer) Mr. Oeland, before you went to Darlington your position was that of Comptroller at Monarch; is that correct? A. That is right.

Q. Can you tell us who got in touch with you in regard to the Darlington position as treasurer? A. One day I started out to lunch and Mr. Sibley, who was Manager of the Monarch Mills, called me and asked me if I would be back about two o'clock; that Mr. Milliken wanted to see me.

Q. Did Mr. Milliken discuss the position with you? A. Yes.

Q. What did he tell you about it? A. I first met with Mr. Sibley and Mr. Milliken, and they said that this position as treasurer of Darlington was open because of Mr. Nicholson having decided to retire.

They had discussed several of the treasurers as the logical men to fill the job. And he had suggested me. And they said that they would like for me to go to Darlington.

Q. And you accepted it, I take it? A. Yes.

Mr. Updike: Can we have the approximate time of this conversation?

Q. (By Mr. Dyer) Is this 1951? A. It was in July. I don't remember the the exact date. But it was about the middle of July, 1951.

Q. Now, moving a little bit in advance, can you—I don't believe this has been fully covered before.

Can you give us a run-down of the various staffs and departments you had at Darlington during 1955-1956? A. I had two superintendents, a production superintendent and a technical superintendent.

Under the Production Superintendent was the overseers and the group that actually worked in the production. Most of the people in the mill.

Under the Technical Superintendent was the Quality Control Laboratory, the Industrial Engineering Department. And part of the time the shop force was under him, and part [3299] of the—I changed it, I think, during those years.

It used to be under the production superintendent. I had changed it and put it under the technical superintendent, and I changed it back and put it under the production superintendent.

I also had an accountant who kept the books; I had Miss McFarland that was referred to that did a variety of jobs. That is, reporting to me. I am trying to get that straight.

Q. Yes. A. And the Payroll Department at that time actually was—it might be considered reporting to me. I had planned to bring on the man that was keeping the books and make him office manager, but I had taken an inexperienced man and taught him how to keep books, and he just hadn't gotten far enough along to qualify my putting all this group under him.

Q. Was that the outline of the plant? A. I don't think I have overlooked anything.

Q. All right.

Now, getting to Miss McFarland for a second, you stated I think that she had various duties? A. That is correct.

Q. I think she has been referred to in some of the exhibits as a personnel woman; is that right? A. I think she has been referred to as that, yes.

Q. Well, in the meetings of the Southern Personnel Managers, [3300] did she attend those meetings? A. I think on one occasion she went.

Q. Now, can you tell us what she had to do with personnel? A. I think most of this has been covered previously, but I can go over it.

Actually on personnel, she did nothing more than to keep the files on those that had applied for work and to follow up on them. In other words, anybody could apply at Darlington Manufacturing Company. I had put in the system of letting each person make out their own application form, thinking that it would give us information about how they could write and how intelligent they were, and so forth.

And that particular person would bring their form, filled out, or partly filled out, to Miss McFarland. She, in turn, would go over with them and ask them questions where they hadn't filled it in or maybe had misunderstood what information was requested.

And she would try to size them up and make, I think, some little notations all her own that nobody could read, or maybe she didn't even make them, on this application form as to their appearance and what she might know about the background of the family, or who was in the mill, and things like that.

[3301] Then when a particular supervisor or overseer wanted a person, they would go to Miss McFarland and she would suggest to them "Now, here are several that might fit your mill" and they would go over those.

Then if they wanted to see anyone or two, or maybe several, why, then at that time she would perhaps investigate with their previous employer something about the person, or maybe she would—in a town like that where she knew a lot of people she might not even go back to the employer. She might go to somebody in town.

It is entirely possible to ask some overseer that might know something about them. And then that person would be sent to the overseer, and the overseer then would decide whether they wanted to employ the person. Then after the overseer decided they wanted to employ this person, then they would go back to Miss Macfarlan and complete the usual routine, the physical checkup they had to have.

And she, of course, would check that, because she had been a trained nurse. She was in charge of the first aid room. She would check with the doctors if there were any deficiencies in eyesight or glasses or hernias or anything like that, as to how serious they were.

And then she would fill out with her the group insurance application if they wanted to take group insurance. They would fill out how many dependents they had for the tax [3302] angle, a form for that. In other words, all those routine things were taken care of. Then she would tell them to report to the particular overseer or department.

Q. Now, there has been reference to the Darlington employees handbooks. Would she give those out to the employees at the time of their being hired? A. This handbook, as has been said before, was printed. But to my knowledge the signing of that was not carried out at any time while I was there.

Trial Examiner: The what wasn't carried out?

The Witness: The signing.

There was a place for them to sign.

Mr. Updike: Just inside the rear cover.

Identifying it on the record, it is a reference to Respondent's Exhibit N-1.

The Witness: The supply, as far as I knew, had run out. There might have been some available around there, but they were not available enough to give to new employees, and it was never reprinted. Extra copies were not reprinted or made.

* * *

[3304] Q. (By Mr. Dyer) To go to the Industrial Engineering Department at Darlington for a minute: How large was that [3305] department at Darlington? A. In 1955 and 1956, if I remember correctly, I spoke to the technical superintendent who is in charge of it, and he had two men that did time study work and other work. I mean that would be just part of it. He had Mr. Barrett who was head of the Cost——

Trial Examiner: Well, I think unless you want to explore this further, there were two men under the Technical Superintendent.

Q. (By Mr. Dyer) In the Industrial Engineering Department; is that right?

Was the Cost Department considered as part of the Industrial Engineering Department? A. No. The technical superintendent.

Q. Well, was it considered as part of the Industrial Engineering Department? Or was it a separate department? A. No. It was a separate department.

Now, I think in addition, if you want it, that they had some girls that periodically checked information like loom stops, don't you see, in the weave room; ends down in the

spinning room, which was a part of industrial engineering; because, after you put in a job, why, of course, it was based on so many ends down and so many loom stops.

So, you had to consistently study those to see whether we were meeting our part of it, and so forth.

[3306] Q. Were they assigned to the Industrial Engineering Department? A. That is right.

Q. Now, were there plans in 1956 to enlarge the Industrial Engineering Department? A. We were planning to go into this—I think it has been referred to as "engineered cost", wasn't it.

Q. Yes. A. And we were planning to go into that. And in the survey, as I remember, it was necessary to hire some additional—one, I think, probably—time study man. We had to increase the Cost Department. And we had to increase the Accounting Department, because it was entirely in between accounting and costs, you see.

* * *

[3308] Q. All right. Now, it says "Our next DM personnel group meeting is [3309] scheduled at Pacolet Thursday, April 12, 1956 at 9:30 a.m."

Did you discuss attendance at this meeting with Miss Macfarlan? A. I don't remember that I did.

Q. Do you recall whether she went to the meeting? A. I don't think she did. I mean I had a time getting her to go to these meetings. She didn't like to go. And she didn't like the long drives. We were way off.

The only one I remember she attended was the one in Gainesville. But I could be wrong. I don't remember if she went to this meeting; because, as I said, she had so many other duties, and she just didn't like to go to the meetings.

Q. All right. A. I don't remember if she went.

Q. Do you recall receiving reports or minutes of the personnel meetings? A. Yes.

* * *

[3317] Q. (By Mr. Dyer) Mr. Oeland, to move to another topic: When the union organizational campaign started at Darlington during 1956, you kept Mr. Milliken advised as to the progress of the campaign through your newsletters, did you not?

Mr. Updike: I object to the form of the question as to whether he kept him advised.

If you ask him whether he wrote and sent the letters to Mr. Milliken, I will make no objection to that.

Trial Examiner: Well, did you include reference to the campaign in your newsletters to Mr. Milliken?

The Witness: Yes.

Q. (By Mr. Dyer) Now, as to the use of Mr. T. J. Glenn during the campaign, did anyone suggest to you that he might be helpful? A. No. I asked for him.

Q. Who did you ask for him from? [3318] A. I requested Mr. Sibley of Monarch Mills to see if he would let me borrow Mr. Glenn.

Q. Mr. Sibley agreed to it? A. Yes, he agreed to it.

Q. Did you inform Mr. Milliken that you were asking Mr. Sibley for the use of Mr. Glenn during the campaign? A. Since those newsletters covered such—I would think that somewhere in there I would have said something about it.

Mr. Updike: Do I understand that last answer to mean that he does not now recall what, if any-

thing, he said to Mr. Milliken other than as appears in the exhibits?

Trial Examiner: Well, this is a little difficult. Now I will tell you my interpretation of the answer.

My own notation on this was that he thinks he informed Mr. Milliken in the newsletter.

Now, is that accurate?

The Witness: That was an accurate statement.

* * *

Q. (By Mr. Dyer) Can you tell us who Mr. Sloan was? A. I think it has been brought out in this hearing that [3319] Mr. Sloan was an outside consultant on wage and hours matters.

Q. Did Mr. Sloan make a survey during the time of the Darlington campaign? A. I think in the record you will find that he was there some time in the summer. Perhaps July or August.

Q. What kind of survey, he did make a survey, did he make? A. He made one similar to the others he had made, except that on his coming there, I had sat down and gone over with him the fact that they were being organized and asked that he further make any observations that he could that might be helpful to me.

Q. You said similar to the other surveys he made. What would those consist of? A. They would consist of his coming there periodically and first going over all payrolls to see that information was kept in accordance with the wage and hour law. And then he would go out into the mill and talk to supervisors about the practices that were going in, or "Are any of your help coming in ahead of time" or "Are they going to work before time?". All practices that would be covered in the wage and hour.

Q. And you say these were periodical surveys that he made? A. Yes.

[3320] Q. Did you have a contract with him that called for periodic surveys or something like that? A. We had an understanding with him. Yes, I think it outlined—at least it outlined how often he would come.

I understood he was available if I wanted to call him about any matters that would come to my attention.

Q. Now, during the summer of 1956 do you recall that Laurens Mill started making a style which you had at Darlington, only Laurens was making it on a wide loom? A. Yes.

Q. And did a representative from Laurens come to Darlington to check on the weaving and the styling? A. I know we had some possibly telephone discussions, and possibly it was through Elliott Miller, about being willing for him to come.

I told him I would be glad for him to come. And the way I would handle that, and perhaps the way this was handled, was I would call in Mr. Goodwin and say they called about so and so from Laurens and wanted to come down to the mill and would you take care of him when he gets here.

* * *

[3322] Q. (By Mr. Dyer) Directing your attention to the second page of this letter, it says "Several of our supervisors and staff employees have visited other DM Mills. They have also visited several mills outside the DM group. I feel it is time for some of them to make up their minds, as I do [3323] not think it wise for them to dangle on with mills especially in the DM group if they are seriously considering going elsewhere." A. What is the question.

Q. Do you recall whether this occurred or not? A. That they made visits?

Q. Yes, sir. A. They must have.

Mr. Updike: I think your earlier question was: did he provide the time to them to go make these visits.

Q. (By Mr. Dyer) Were they given time off to go make these visits? A. Yes.

* * *

[3326] Trial Examiner: GC O-6 is received.

* * *

Q. (By Mr. Dyer) This report of operations, was this something that was in existence before you went to Darlington? [3327] A. Yes.

Q. This is a report for every four-week period; is that right? A. That is right.

Q. Now, the report covers a number of different things, and is the overall direction report under your supervision? A. That is right.

* * *

[3334] Q. All right.

Will you turn to the next page, which is numbered 189 at the bottom.

This has a heading "Expense Reductions Accomplished."

Now, what does that entail?

A. This, you will notice, was prepared by Mr. W. S. Hawkins, who was the technical superintendent.

And it would have to do with savings brought about by any change in labor complement or jobs that were eliminated.

Q. All right.

Then the following section is Expense Reduction Plans.

Would that indicate the plans for reducing personnel or including new machinery or equipment which would enable you to reduce personnel at the plant? A. I don't like the word "personnel". It is jobs.

[3335] Q. Well, jobs. Eliminate certain jobs? A. That is right.

Q. Now, the following heading is "Job Assignment Changes Accomplished"

What would the job assignment changes be? A. There again the job studied and the possibility of by putting in the new job the job could be put out. That was the thing that was accomplished during the period.

Q. (By Mr. Dyer) The next section is Job Assignment Changes Plan.

Is that supposed to be elimination of the jobs that are listed there? A. They were studying to eliminate them. These were all goals, you remember, that were planned.

Q. All right.

Can you tell us how those goals were set up? A. By job study. By time study.

Q. No. I mean the goals themselves? A. Set up by the technical department as to some of the things they are working on hoping to accomplish.

Trial Examiner: Whose technical department?

The Witness: Darlington's.

Q. (By Mr. Dyer) Was that in consultation with DMIED on occasion? A. If you compare jobs in a mill, you have to compare the contents of the job, which would vary from mill to mill or [3336] place to place. It is entirely possible that they checked their work at times with DMIED. But these jobs were planned by us and studied by us and put in by us.

Q. Is your testimony, then, that on occasions DMIED did consult in this matter of setting the goal? A. No. They would only check our work at times possibly.

Q. All right.

Will you turn to the following page.

This is numbered 190 at the bottom. You have a number of jobs. And you show present period, previous period, net gain, and goal for 1956.

Now, the goal for 1956 was one that was set up by your department—by the technical department of Darlington; is that right? A. Yes.

Q. Can you tell us whether goals—can you tell us whether at one of the treasurers meetings all of the mills had established goals for reduction of personnel for that year? A. Let's get back to jobs and leave out the personnel.

Q. Excuse me.

Can you tell us whether at one of the treasurers meetings a general—whether all the mills decided to try to reduce the number of jobs at their mills?

Mr. Updike: Well, I think on the record before you, sir, every mill was trying to reduce its jobs day in and day out.

[3337] That was not a problem as such for a treasurers' meeting.

Mr. Dyer: What I am talking about was: was there a decision at one of the treasurers' meetings to establish goals for each mill for each year?

The Witness: It would be impossible at a treasurers' meeting for anybody to establish the goals for the next year other than the mill itself.

Q. (By Mr. Dyer) What I am saying is: was such done at one of the treasurers' meetings?

Do you recall whether——

Trial Examiner: Was the impossible accomplished?

The Witness: As I understand the question, it is a question whether a discussion was had at the treasurers' meeting as to whether goals of the different mills could be accomplished?

Mr. Dyer: Would be established.

The Witness: Would be established?

And my reply is that there could not be a discussion there because there are so many elements that would enter into it.

Mr. Updike: Well, was there such a discussion?

The Witness: Not that I remember. They may refer to a chart. It is possible that we had a chart at the treasurers' meeting. But it had no relationship to the jobs we would have at Darlington as compared to any of the others.

* * *

[3338] Q. Now, your next topic is "New York Office. What generally is covered in that category? A. It was any items or relationships between ourselves and the office in New York that sold our goods that I might give that would be helpful for better cooperation.

* * *

Q. (By Mr. Dyer) Now, in this particular instance, you state "We had a call from Alan May yesterday in regard to some 40 inch 80x72 4.16 print cloths, which is a 80 square with fewer picks. The customer wanted to buy six hundred thousand yards for the first quarter and Monarch was unable to deliver any more goods.

"This morning I got in touch with Mr. Sibley and he agreed for us to take this business as well as any 80 square for first quarter, as he was pretty well sold up.

"We are doing this with the understanding that we will [3339] not compete in price with Monarch on this construction and will make this change for the first quarter looking into sales for the second quarter on a competitive basis with Monarch."

Do you recall whether—well, I think that answers itself.

Then you talk about what looms you are planning to put these styles on. And you say "This move will be helpful to us in relieving the weaver situation by putting 80 to 100 looms to the weaver on these styles. We then can eliminate some of our submarginal weavers who have been trained in recent months and improve the weaving operation we hope." What do you mean by eliminating some of the submarginal weaving? A. This would indicate that when a weaver operates additional looms, it would take less weavers to operate all the looms.

It is stated here that we are training some weavers and they were not well trained. And by increasing the looms, because of the picks in the goods which had a basis for the number of looms a weaver could take, why, then——

Q. Well, you would be able to lay off some of the poorer weavers; is that correct? A. Use them for spare hands. We wouldn't lay them off. We spent money training them. We would hold onto them.

Q. The next one is Plan for New Style and Fabric Develop- [3340] ment.

Apparently you had no comments on that at this time.

The next is 13, Personnel, Number of Trainees Hired.

Apparently there were no changes in your personnel during this period.

The next thing you note is machinery in the bottlenecks. What would be the ordinary thing you would bring out in this particular section? A. In any department we had an

area where the production from those particular machines, the product, could not get through fast enough, depending on what we were making and how much of the product we needed.

That would be a bottleneck, you understand. So, we couldn't keep other areas running at full time, which is a thing we try very hard to avoid and to correct, because we were anxious to keep high production.

Q. Then you have sections on new machinery being investigated and new machinery on order.

Apparently you had none during this time? A. That is right.

Q. On the last page the topic is Loom Stop Tests, Average Stops Per Loom Hour.

What were these tests? A. I referred earlier to the fact that we had under the technical superintendent and Industrial Engineering these girls that would make studies on loom stops. This was information [3341] that was gathered on these studies.

Q. And then number 16 is set up as "Trips." What trips would ordinarily be encompassed in that section? A. It would be trips especially to mills, the competition outside of the DM Mills, whatever we decided to call them.

* * *

[3342] Mr. Dyer: Mr. Examiner, I now offer a report of operations for the period ending January 22, 1956 as GC 0-7.

* * *

Q. (By Mr. Dyer) Mr. Oeland, did you follow the same format for all of these reports of operations that was shown in GC 0-6? [3343] A. Yes.

Q. All right.

Now, referring you to, I think, the ninth page, with the number 238 at the bottom, under the Section C "Job Assignment Changes Accomplished" you state—or rather it is stated:

"The 10x5 roving piece rate was installed.

"The three 12x6½ roving piece rates were installed.

"The warp doffer piece rate was adjusted."

When you say the rate was installed, what does that mean?

A. We had had some changes in our 10x5's. In other words, the 9x4½ roving frames had been changed to a 10x5, which automatically would change some of the items of the job.

Q. Was the job studied by the Industrial Engineering Department? A. By the Industrial Engineering and a new scientific rate put in, yes.

The 12x6½ was new to us at Darlington, and, therefore, it had been—or rather it had to be completely studied, and again an incentive rate was put in.

* * *

[3344] Q. Do you recall whether any assistance was requested from DMIED in trying to set up that rate? A. I do not recall.

Q. Now, turning to the following pages—or the following page rather: Under Present Permanent Jobs you say "482"; Permanent Jobs—previous period, "505½"; a net gain of 23½ jobs eliminated; is that right? A. That is right.

Q. In 1956 the goal was 406½? A. Yes.

Q. When you say—referring back again for just a second—when you say that the rate was installed, does that mean that the job was studied completely? A. Yes.

Q. And was written up as a standard job? [3345] A. In the usual way for a studied job, yes.

Q. All right.

Turning to the following page, 240, under "Key personnel who have quit" your comment is "I told you when you were here——"

And let me stop right there.

[Q.] How often did Mr. Milliken visit Darlington? Do you recall? A. I would say an average would be three times a year.

* * *

[3350] Trial Examiner: GC O-8 is received.

* * *

Q. (By Mr. Dyer) I direct your attention to the third page of this exhibit, Number 256 at the bottom.

* * *

[3351] You say "The maintenance man completed his picker cycle this period. As soon as he completes the cards, he will go to drawing and roving."

Then other things are mentioned as to what is being done on machinery maintenance.

Was this written up by one of the overseers? A. Goodwin, yes.

* * *

Q. Now, let me direct your attention to page 9, which is the next to the last page in this exhibit. It has number 261 at the bottom.

Under the Section Personnel, you state: "We are glad to report that Mr. Grainger from Johnston plant, who was their chief machinist, is going to work for us next Monday morning. Mr. Grainger has made two trips to our plant and Mr. Bill Goodwin seems very well satisfied with his

ability to handle our job here. I feel that we are very much indebted to Mr. Peden for his cooperation in releasing [3352] Mr. Grainger. I may have written you that this was handled through Charlie Johnson's office. We had requested him to look through his files for any second man in any of the shops whom management had recommended for promotion as master mechanic. I wrote you about losing the Gaffney second hand to New Holland. Mr. Grainger was the only other man in the file that had been recommended by his management for a promotion. I am sure it is gratifying to know that we have again made a promotion within the organizations, and I feel that it has been handled in the right way."

Trial Examiner: Who is Mr. Peden?

Q. (By Mr. Dyer) Who is Mr. Peden? A. He was manager at that time of the Johnston Plant.

Q. Johnston is one of the plants in the Excelsior group? A. I think that was testified to yesterday, yes, sir.

* * *

[3353] Q. (By Mr. Dyer) Now, referring first to GC N-77, Mr. Oeland, at the bottom of the first page under "Estimate of Sales and Profits for the Next Three Months" you state: "We are preparing this week a new projected profit. We are planning on reflecting in this extraordinary items of expenses like the Duo-Roth on 80 frames of warp spinning; Dixon front rolls on the same spinning; 39 inch aluminum warp beams; 15 inch cans change over on finisher drawing. We are certain that these extraordinary items are going to mean that we will show very little profits for the balance of the year."

Did you point the same ...ng out in the succeeding three exhibits that there would be very little profit because of the large amounts of expenses that were being incurred? A. I think if you will refer to these extraordinary expenses as listed they will add up to quite a total.

Q. Excuse me. A. They would add up to quite a total, yes.

Q. Which meant that Darlington was going to show very little, [3354] if any, profit for that year; is that right?

For instance, on the succeeding exhibit O-9 you show no profits planned; on 10 you show no profits planned; and on 11 you show no profits planned. A. That is right.

The word "planned" might be a misnomer.

* * *

[3363] Q. Do you recall that in 1956 the cotton fiber quality control and Research Department had expenditures ahead of its budget? A. May I see?

Q. Yes. A. I do recall now.

Q. Can you tell us how this deficit was wiped out? Do you recall? A. By making additional calls on the mills to see if they were using the service.

* * *

[3364] Q. (By Mr. Dyer) The deficit was prorated by use of the mills and the mills paid? A. Yes.

* * *

[3368] Trial Examiner: GC O-16 is received.

* * *

Q. (By Mr. Dyer) Now, this states: "We are enclosing our invoice of five hundred dollars to cover two maintenance boxes and equipment."

Were these the maintenance boxes and equipment that were suggested by DMRC that a maintenance man should have? A. The Research Department, yes.

Q. And you had bought these boxes and equipped them there at Darlington? A. That is right.

Q. This was after the liquidation decision and prior to the auction sale? A. Yes.

Q. You state "We are also enclosing a memorandum outlining the items in each box and cost to us. In discussing the matter with Hal Byrd I suggested to him that he set the price on the boxes.

[3369] "We had a telephone call today stating that he had set the price at $250.00 each. I would suggest that you have someone check over the equipment with the boxes to see that all was included.

"We trust that this price is agreeable with you, and if you find anything missing, kindly let us know."

Whose decision was it to sell these boxes to Monarch prior to the auction sale? A. It was my decision.

Q. And on what was it based? A. This maintenance program that has been referred to earlier by Mr. Milliken in his talk with Mr. Tom Watson was a program that had been gotten up by the Research Department and one that I considered outstanding and one that I felt like belonged to the stockholders of the Research Corporation; and by selling the boxes in the sale, it would have meant that some of these ideas, not only the box but some of the equipment in there that had been perfected by the Research Corporation, would have gone into the hands of competitors.

And, so, for that reason, I felt that it would be wise to sell them if possible to another stockholder mill of the Research Corporation.

Q. And the idea of setting a price by Mr. Hal Byrd, was that your idea? [3370] A. That was my idea.

I had been instructed in handling the sale to Monarch to do everything I could to make it at arm's-length. So, I didn't want to set up a price. I would rather Mr. Byrd would set a price as to what he felt this stuff could be purchased by Monarch for, in an effort to get—well, of course, I could not get outside information because I would have had to give this information to get a bid on it to somebody else.

Q. I see. A. But he was purchasing boxes. These boxes were made as I remember by some outfit down about Johnston, wholly out of the Deering, Milliken group. He just found somebody that could make these boxes as I referred to. Some of it could be purchased; anybody could purchase it. But there were a few things in there in the way of gauges and special things that had been perfected by Research.

Trial Examiner: That is the Deering, Milliken Research Corporation?

Mr. Dyer: Yes, sir.

Q. (By Mr. Dyer) Mr. Hal Byrd was also familiar with the cost of the tools that were in there too, I take it? A. He would have been, on all those except those that were perfected by Research. And he could have easily got the information from them as to what they charged us for it.

Q. Did Mr. Tom Baker go to work for Monarch after the [3371] liquidation? A. Yes.

Q. I believe that Monarch bought a viscometer and a sizometer. Was that at the auction sale? A. At the liquidation sale, as I remember, yes.

Q. And they had some question as to the diagrams for those instruments? A. For the installation of them, yes.

Q. And did you advise them that Tom Baker might be able to help them when he went there in setting up those instruments? A. I did.

* * *

[3372] Q. Do you know whether Mr. Baker went under the retirement plan at Monarch? A. I do not.

* * *

[3373] Q. And did you have any further correspondence, telephonic or otherwise, concerning Mr. Hammond? A. No.

* * *

Q. Did Darlington put either of those two individuals on the retirement plan? A. No.

Mr. Hammond, if you would like the information, left before November 30, as I remember it.

Q. All right. A. And he had gone to a mill outside the Deering, Milliken organization.

* * *

[3379] Q. (By Mr. Dyer) Would you do that, Mr. Oeland? A. I am going down to item 5. Darlington loaned Hartsville a roll weight measuring device and Hartsville loaned Darlington 7,000 bobbins.

I agree to the bobbins. I do not know anything about the loan of the roll weight measuring device.

We did go in with Hartsville and other mills on seeing if we could get the power rate reduced with the Carolina Power Company.

Q. When you say other mills—— A. I mean the other mills outside of the Deering, Milliken mills, the mills selling through Deering Mill.

Q. All right.

Trial Examiner: That is Hartsville and Darlington? And non-Deering, Milliken mills? Did you call them that?

The Witness: Yes, a number of them.

Q. (By Mr. Dyer) Do you recall whether the gentleman who is the treasurer of Hartsville initiated that idea? A. Yes.

Q. Mr. Pitts? A. Yes.

Q. He initiated the idea? A. That is right.

Q. All right. Go ahead. [3380] A. "Darlington requested information from Lockhart's plant regarding heavier drawing sliver."

Yes.

Trial Examiner: Is that number six?

The Witness: Part of six.

The Witness: "Monarch sought to buy warp yarn from Darlington." Yes.

"Referred to warp yarn that drayton had previously bought from Darlington". Yes.

"Darlington requested advice from Monarch about expensing new equipment for its audit purposes."

I know nothing about that.

Trial Examiner: Well, suppose you tell us just those you do know instead of reading the whole thing.

The Witness: "Darlington requested Monarch's program for learners" and so forth.

Trial Examiner: Is that number seven?

The Witness: No. That is still part of six.

Mr. Dyer: "Learners or rates paid to learner. Reports from them on the cost of the mill" et cetera.

Mr. Schoemer: I think we had better get that clear.

I am referring now to a letter from Mr. W. A. Goodwin of Darlington to Mr. McBee of Monarch saying "I understand that Monarch has a very good program on learners. I am interested particularly in spooler hands, spinners, and doffers. [3381] I would like to get from you, if possible, the program you have for how long they are on learner's rates, what progress a learner is required to make, and what methods you use for keeping track of the progress. Also do you keep an accurate record on all learners in the mill; how long they have worked; and how much it has cost the mill? I would appreciate any information you can send me, as I am anxious to get a good program in effect."

Mr. Dyer: The quotation that Mr. Schoemer has just recited was a letter from Mr. Goodwin.

The Witness: I am continuing under 6:

"Jonesville Products Company, Inc., a subsidiary of Monarch, contacted Darlington in respect to a possible order of six to eight hundred thousand yards of cloth for crib sheets."

There was an exchange between Darlington and Jonesville, but the order was never made.

Q. (By Mr. Dyer) Can you tell me this: Was the sheeting material that Jonesville requested one that you were not able to make at Darlington? A. We could have made it.

Q. What was the problem about making it? Was it the price, or what? A. I think price was one of them. And the fact that we were not taking any—or were not at that time making that particular [3382] style.

Q. All right. A. And then we had some other problems of balancing.

Q. Balancing the mill? A. That is right.

Mr. Schoemer: Mr. Dyer, I hand you herewith the correspondence referred to in that particular item.

Q. (By Mr. Dyer) Mr. Oeland, I show you this. Is this the letter you wrote to Mr. Hester at Jonesville in regard to the order? A. Yes.

Q. I note in the second paragraph you state: "We have avoided going into any colored yarns in our mill because of the fact that in slashing and weaving invariable some color gets off on other constructions." A. Yes.

Q. Was that one of the main difficulties with the order? A. That was one. Plus again the price comes into it.

Mr. Schoemer: And I think there may be a question as to the amount of yardage according to the statement that Mr. Oeland just read.

The Witness: A hundred thousand yards. Your statement is correct.

Trial Examiner: Whose statement?

The Witness: Mr. Dyer's statement.

[3383] Trial Examiner: About what?

The Witness: Six to eight hundred thousand yards.

Mr. Schoemer: A year?

The Witness: Yes.

Under 7: "Darlington requested a number of forms from Pacolet stating it wanted them for information purposes for Darlington's revision of its own form."

There is a letter in my hand addressed to Mr. R. B. R. Turnispeed, Pacolet Manufacturing Company, New Holland, Georgia, from Miss Kate Macfarlan.

It reads——

* * *

[3384] The Witness: "Mr. Stallworth asked me to write you to please send us copies of some of the forms you use at Pacolet, such as pay error slips, termination forms, and any that you think are particularly helpful that we might adopt. We are revising quite a few of our forms and would like your experience to guide us."

Another item under 7: My visiting Pacolet to discuss with Mr. Stone the placing of 28-inch loom beams on E Model looms.

I did go to Pacolet to discuss it with him. This was done at the suggestion of Mr. Roger Milliken, that is correct.

"Darlington, after first talking with Deering, Milliken Service Corporation, Placement Department, wrote to Pacolet in regard to obtaining a cooperative student who was then working at Pacolet and asked Pacolet about his work and his wages." Pacolet sent Darlington information in regard—excuse me—in answer to the cooperative student, he was not working at Pacolet; he had worked there and at that time was at Georgia Tech.

We did inquire as to what wage rate they paid him when he did spend three months at Pacolet.

This has been referred to in earlier testimony.

* * *

[3386] Q. (By Mr. Dyer) Now, the next item; do you recall whether Darlington asked Pacolet if it had a picker lap scale for sale?

Mr. Schoemer: Yes, it did. On March 26, 1956.

* * *

The Witness: Darlington did not buy report forms from Abbeville, but rather ordered them through Mr. Byrd, the purchasing agent.

[3387] Q. (By Mr. Dyer) Well, I was referring to the printing plant located at the Abbeville mills. A. Right.

Q. And the report forms that were bought through Mr. Byrd came from the Printing plant at the Abbeville Mills? A. Right.

But they were purchased by Mr. Byrd, not by Darlington.

* * *

Trial Examiner: They were billed by Abbeville to Darlington; is that right?

Mr. Dyer: Yes, sir.

* * *

[3397] Q. (By Mr. Dyer) Continuing over on GC 0-19, I see a space for "DM commission" which would be the commission rate as charged? A. Yes.

* * *

Q. The next item shows the net sales and the sales net returns.

Now, the amounts of the insurance charged—the charges for insurance were billed to you on the statement from DM; is that right? A. That is right.

We would get a statement from the Insurance Department. Instead of us sending a check to the Insurance Department, it would be charged against our Account. We had a statement of that $10.41, whatever it was, that they would send us attached to it, so that we could keep up with the insurance that way.

[3398] Q. Where Darlington had goods finished for sample purposes, would the bills come to you, and then Deering, Milliken would bill you for them on the statement? A. What is the question, please?

Q. Where Darlington had goods finished for sample purposes? A. If we had requested any of our goods finished for sample purposes, it was usually handled by Deering, Milliken, because they were in contact with these different bleacheries, don't you see; and the bleacheries would bill them and then they would charge us.

* * *

[3411] Mr. Updike: I wouldn't—could we save a lot of time, Mr. Dyer, if you would ask the witness whether he accrued the charges of the respective departments of the Service Corporation and of the Research Corporation? It is pretty apparent that he did, but it seems to me you could save time by just listing them.

Trial Examiner: Yes.

Q. (By Mr. Dyer) You have just heard what Mr. Updike said. [3412] Did the Darlington Manufacturing Company accrue amounts against the costs for all the Service Corporation and Research Corporation—for the waste of those on a quad-weekly basis? A. They did except for the Tax Department.

Q. That was with DMSC?

* * *

Mr. Dyer: That was Deering, Milliken and Company rather than with the Service Corporation.

The Witness: That is right.

* * *

[3416] Q. Mr. Oeland, do you recall the time Barnes Textile made a survey; they suggested putting Draper and Hunt spreaders on looms? A. Yes.

Q. At that time, Bill Goodwin, along with Mr. Lowry, I think, was there at the meeting; I don't recall if anybody from DMRC was there; and he mentioned that at that time DMIED had had experience at other DM Mills with the spreaders, and that they hadn't proved successful. A. Darlington had too.

Q. Had Darlington used those spreaders before, and had they [3417] not proved successful? A. They threw them off the looms when I was there in 1951.

* * *

Q. (By Mr. Dyer) As to those spreaders, you did not follow Barnes' recommendation on that and put them back on the looms, did you? A. No, sir.

Q. (By Mr. Dyer) Do you recall in May 1956 you wrote to Mr. Milliken and made mention of the fact that the Card Room had very little spare help and you would like to arrange to get in more, give the people vacations on their requests, and that you would [3418] like to have his approval before you moved in the matter? A. I don't know why I should have asked his approval.

* * *

I think, if you want an explanation, the reference is badly paragraphed. The reference I made to him was not the question of hiring additional spare help but the question of the shutting down one week for a vacation.

It is misleading like it is worded and paragraphed.

Q. Well, were you asking both questions or just about the vacations? A. I had no reason to ask him about the spare help. I mean there wouldn't have been any question in my mind about that.

[3419] Q. (By Mr. Dyer) Then you were asking him whether you should shut down for a week; is that right? A. Mr. Dyer, there was never any doubt in my mind when I ran Darlington that the decision was mine. The way I handled it usually was to make up my own mind; pass it on in some shape to Mr. Milliken; if he wanted to object and I wanted to argue with him, I would have argued with him. But that question I had not definitely decided at that point what I would do.

Q. Well, were you asking him his advice on it or what was the reason for it? A. I was just thinking out loud.

Q. I direct your attention to the last paragraph of GC N-71, Mr. Oeland. This is in regard to Mack Thornton being at Darlington. And I think the words you used were "Mack Thornton is here to appraise our supervisors and he feels that perhaps he can complete this work by Tuesday or Wednesday of next week."

You were there at the time? A. Yes.

Q. What did Mr. Thornton do? A. Mr. Thornton came in and he sat down with me and discussed the three that I had suggested before; that is, Mr. Goodwin, Mr. Hawkins, and Mr. Watford, who were directly under me. We sat down, and I had a form; he would ask me [3420] questions "What do you appraise this man on this, shall I say, efficiency, attitude, and different things?"

And I appraised those three. Then he went to those men and got appraisals for people under them. He went down to the overseers and got appraisals for the second

hands. Then he went to the second hands. Then after the second hands had been appraised with the overseers, it was brought to the superintendent. All the forms before they left, I sat down and went over them with him to see if my personal knowledge agreed with his appraisal.

Q. All right. And then that appraisal was taken back to DMIED; is that right? A. Yes, that is right.

Q. And it was DMIED's decision to offer sixteen of the supervisors at Darlington positions for three months? A. To keep them on the payroll for three months.

Q. Just keep them on the payroll?

What is the distinction you draw there? A. I think Mr. Lowry testified that they could use some of them, and that in different spots they could use them to advantage, but that they would be available if other DMIED mills during that period would like to have these men.

Q. In other words, DMIED was not going to work these men the full three months? A. Yes.

[3421] Q. They were? A. Yes, they were going to work them.

Mr. Dyer: I was confused on that.

Trial Examiner: I didn't understand that. You said DMIED could use them.

The Witness: That is true. But they would work them. They would give them jobs to do.

Mr. Dyer: I think we were confused by the words that they were just going to keep them on the payroll.

The Witness: Yes.

Q. (By Mr. Dyer) They were going to have them do some work while they were on the payroll? A. Yes.

And I think the testimony was also brought out that no one of the supervisors was ever put on this DMIED payroll for a designated time.

Q. I now show you GC N-72.

Trial Examiner: Well, now, this isn't at all clear. I thought you told us that it was decided to keep them on the DMIED payroll for three months.

The Witness: That is right. But no one of them was ever transferred to DMIED payroll.

Trial Examiner: This was a decision you mean which was not actually effectuated?

Mr. Dyer: What he means is that the men didn't take up [3422] DMIED on it. They got jobs elsewhere in the meantime.

Trial Examiner: I see.

The Witness: I might give you the background on that. I think I was the man who started it. I had the men clean up and get ready for the sale. It has been brought out that I was going to keep them on the payroll until November 30. I realized that these men would feel uneasy if they knew on November 30 they were going to be without a job, and I had a job for them to do which was very important. So I was interested in making some arrangements besides my interest in them personally; I was interested in making some arrangement where they would not just have this drop-off.

But before the time came, why, these men were all placed. There is a letter on Mr. James Anderson about February 1st, which was a warehouseman, and he never did go to DMIED: not at single one of them did.

Q. (By Mr. Dyer) Referring to the third paragraph on GC N-72, dated September 28, 1956, you state "I feel that it would be very helpful if I could have some word from you to what promise I can make to the supervisors should the stockholders approve the action of the Board of Directors. I feel that I could reasonably promise them that you would want to keep them here until November 30th on the payroll. I hesitated to make this promise in view of the fact that I had no word from you as to what you felt would be the right thing."

[3423] Did you ever receive any word from Mr. Milliken in regard to that? A. No.

Q. Did you take his silence as consent to your plan? A. I did.

Q. Did you then tell the supervisors you would keep them on until November 30? A. I did.

Q. All right.

Directing your attention to the fourth paragraph in regard to the bonus to be paid Mr. I. J. Glenn, did you ever receive any direct word from Mr. Milliken with regard to it before the Directors' meeting was held? A. I don't remember that I did.

Q. Well, was that true that at the Directors' meeting that this bonus was approved for Mr. Glenn?

Is that right? A. That is true.

(General Counsel's Exhibit No. O-20 was marked for identification.)

* * *

[3424] Trial Examiner: And you are referring now to what has been identified as GC O-20?

Mr. Updike: Yes, sir.

Q. (By Mr. Dyer) This is the copy that was taken from the files. You might be able to tell more about it.

Can you tell us in the penciled information on the first page who made that out? [3425] A. I would think that Mr. Watford did. It is his handwriting.

Q. That is Mr. Watford's handwriting? A. Yes.

Q. He was the accountant at Darlington? A. That is right.

* * *

[3426] Trial Examiner: Well, what we have to this point is that GC O-20 is a draft by Watford, and that it was not filed with [3427] the Federal Trade Commission; is that right?

Mr. Updike: Yes.

Mr. Dyer: It would appear from the copy Mr. Updike has here that there was a change in this item number four.

Mr. Updike: Well, I don't think you are answering Mr. Buchanan's question, if you don't mind my saying so.

Trial Examiner: Well, is it correct to say that the paper filed with the Federal Trade Commission was not in the form of GC O-20?

Mr. Updike: Right.

Mr. Dyer: In regard to that particular, yes, sir.

* * *

[3431] Q. (By Mr. Dyer) At the time that you were Comptroller at Monarch, were the Monarch accounts set up in a similar manner to the Darlington accounts you have been through here this afternoon? A. Mr. Dyer, it was so different. You see, Monarch had three plants. They

were all kept in one place. They had a Lockhart Plant and an Otteray Plant and a Monarch Plant. [3432] And you would have combined accounts.

Q. I see.

Well, for instance, did Monarch accrue amounts against what the Service Corporation would—— A. Ever since I have been in the business you accrued all expected expenses at the end of an accounting year. That is good bookkeeping.

Q. Well, would Monarch have more accounts than, for instance, what this shows?

I think we got up to about 1800. A. That is not 1800, Mr. Dyer. You would—in setting up your accounts——

Trial Examiner: Each hundred represented some different title; is that right?

Mr. Updike: That is right. It is a code, in fact.

Q. (By Mr. Dyer) Was a similar or the same code followed in Monarch? A. I set this up at Darlington. I probably had something to do with setting up the accounts at Monarch. But I would code them according to the situation, not according to the—I mean the numbers would not mean—if you mean that 1822 meant something in Darlington and the same thing in Monarch, I would say absolutely not.

Q. Not the same number meaning the same thing, but would the same series mean approximately the same thing?

[3433] In other words, would you have an 1800 meaning certain things at Darlington and at Monarch? A. No, I would say not.

* * *

[3437] Q. (By Mr. Janes) Mr. Oeland, what paid holidays were given [3438] to the employees of Darlington in 1955? A. July 4th, Thanksgiving Day, Christmas, and New Years, as I remember.

Q. Do you recall—well, you say four holidays? A. Four holidays, yes.

Q. Do you recall whether the same conditions obtained in any of the other DM Mills with respect to the number of paid holidays? A. No. I would doubt it, but I do not know.

Q. You have no knowledge as to Monarch, have you? A. No.

Mr. Schoemer: The information that I have, Mr. Janes, is that the statement Mr. Oeland just made would also apply to Monarch.

As to either Gaffney or Hartsville, it would not apply. In one instance those four days—and I am not sure which—those four days are not paid holidays.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Q. (By Mr. Janes) Mr. Oeland, in Darlington in 1955 were there any holidays observed in which the employees were paid when the plant was operating?

Trial Examiner: No. When the employees didn't——

Mr. Janes: When the employees were not working, yes.

The Witness: There were no holidays as such that were [3439] paid.

Q. (By Mr. Janes) And do you know of your own knowledge whether that same condition obtained in any of the other DM Mills? A. I do not.

Trial Examiner: Well, I think we should explain——

Mr. Janes: I don't know whether my inquiry to you embraced that.

Mr. Schoemer: I can't answer that. As to these three other mills that I have mentioned, namely, Monarch, Hartsville and Gaffney, the statement Mr. Oeland just made agrees with the practice in 1956 at those mills. I have no information as to their 1955 policy.

Trial Examiner: Well, shall we take that as a stipulation, then? That with respect to Monarch, Hartsville, and Gaffney, employees were not paid if they did not work on the holidays mentioned, or any other?

Mr. Schoemer: Yes, sir.

Q. (By Mr. Janes) And what were they paid if they did work Mr. Oeland? A. They were paid time and a half for the hours actually worked.

Mr. Janes: And Mr. Schoemer, that same condition obtained in the other plants that you mentioned?

Mr. Schoemer: That is correct.

[3440] Mr. Janes: Thank you. That is all.

Mr. Updike: They are not the same holidays.

Mr. Schoemer: No, they are the same holidays.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Schoemer: Mr. Janes, you also asked me yesterday to investigate the question as to whether any premium pay was paid on any shifts except the first shift. On investigation, I find that so far as Monarch and Hartsville were concerned, no shift differential was paid, but that at Gaffney an hourly differential was paid for work on the second and third shifts.

Mr. Janes: What do you mean by the hourly differential?

Mr. Schoemer: An hourly premium. I don't recall what it was.

Mr. Janes: You don't recall?

Mr. Schoemer: No.

Mr. Janes: Monarch and Hartsville and Darlington, no shift?

Mr. Schoemer: That is right. I believe that is right so far as Darlington was concerned.

The Witness: That is right.

Trial Examiner: Shall those statements be received as a fact on the record, gentlemen?

[3441] Mr. Janes: Well, I asked Mr. Schoemer to secure the information, and I am accepting it as such.

* * *

Q. (By Mr. Janes) Could you tell us whether in Darlington there was any seniority list established or formulated at [3442] any time while you were there? A. For payments.

Trial Examiner: No. Seniority for length of service.

Mr. Janes: Yes. According to length of service.

The Witness: No. We had it in our records. We tried to get an employment record when people were employed; but there was not established seniority rulings as such.

Q. (By Mr. Janes) You didn't utilize that list or the seniority for any consequences such as promotions, and so on? A. No.

Mr. Schoemer: Well, Mr. Oeland's answer to that, then, differs with the answers given to us by some of the other mills which said that seniority was a factor that they took into account in determining the order of lay-offs.

Q. (By Mr. Janes) Was that the situation in Darlington? A. We would take seniority in account along with several other things when it came to some questions like that.

Q. Is this similar to the point that you are making, Mr. Schoemer?

Mr. Schoemer: Yes.

Mr. Janes: That seniority and length of service was considered with other factors in connection with the layoffs?

Mr. Schoemer: That is correct.

And this embraces what plants are—well, it embraces Monarch, Hartsville and Gaffney.

* * *

[3443] Q. (By Mr. Janes) What were the shift hours in 1955-1956? A. The first shift worked from 8:00 a.m. to 4:00 p.m. The second shift worked from 4:00 p.m. to 12:00 midnight. And the third shift worked from 12:00 midnight to 8:00 a.m.

Q. Do you know whether the same shift also obtained in any of the other DM plants? A. I think Monarch had the same shift. And I think Hartsville had an hour earlier. In other words, they would start at 7:00 a.m. and go until 3:00 p.m., and so on.

* * *

[3444] Q. (By Mr. Dyer) Mr. Oeland, when Mr. Milliken was on the stand the other day, I believe I showed him a letter from the Institute of Textile Technology, dated June 15, 1956, and I asked him some questions about the contracts as being forwarded to Darlington.

I believe he said he didn't have any information on that. Do you recall receiving this letter from Mr. Hance from the Institute of Textile Technology? I direct your attention specifically to the second paragraph. A. Yes.

Q. In the second paragraph it states "The trustees at the May meeting asked that I write to each member company urging the contracts be renewed at this time in advance of the expiration date next year. In conversation with Mr. Milliken he asked that these contracts be forwarded directly to you for execution."

[3445] Were the contracts enclosed with this letter? A. Where they were received, yes.

Q. And did you execute the contracts and send them back? A. Yes.

* * *

[3448] Trial Examiner Buchanan: On the record.

As I did at the opening of the session on October 9, I shall read into the record the telegram which I received on return to my hotel at the close of the hearing yesterday.

This is addressed to me at the Barranger Hotel here.

"Re: Darlington Manufacturing Company, et al, 11-CA-1071. Board has considered Textile Workers Union's appeal from Trial Examiner's ruling which granted motion to dismiss amended complaint as to Roger Milliken, an Individual, and the parties' briefs related thereto. Board affirms Trial Examiner's ruling upon the sole ground that the amendment of the Complaint to the extent that it included Roger Milliken as an individual respondent went beyond the permissible scope of the Board's remand order of December 16, 1957. Frank M. Kleiler, Executive Secretary."

There is one other matter that I want to mention. The Board's Remand Order, you remember, calls for "Evidence relevant to the single employer status of Respondent and Related Corporations."

On Tuesday the various mills and mill corporations which sell through Deering, Milliken and Company, Inc., were named by Roger Milliken. Including Darlington, 17 corporations, some of them wholly owned subsidiaries of others of them, and twenty-seven plants, were thus identified.

[3449] Is that correct?

Mr. Dyer: Yes, sir. I believe so.

Mr. Updike: Yes, sir.

Trial Examiner: I think we all agree on the identification of the corporations which are alleged by the General Counsel and the Union to be "related corporations."

I think that also that such identification should be stated specifically on the record.

I wonder whether that is clear. We have reference to related corporations. And I think the claimed extent of those related corporations should be stated.

For example, we have the 17 mentioned. I think we, or General Counsel and the Union, including Deering, Milliken and Company, Inc.

Mr. Dyer: Yes, sir, and the Service Corporation and the Research Corporation.

Trial Examiner: I wanted that said on the record because I don't think to this point—I may have forgotten—but it is my impression that that has not been specifically stated on the record.

Are there any others?

Mr. Janes: Mr. Trial Examiner, I think I said the other day that the position of the Union will be that the single employer status between Darlington and the related corporations would include the corporations related directly and [3450] indirectly.

And, Mr. Dyer, I think has referred to the corporations that will be claimed to have been related directly. I believe that in our briefs we will take the position that there are other corporations that are related indirectly because they are related to the corporations that are related directly.

Trial Examiner: Yes. Well I think it would be helpful. What you are telling us is that we have the

17 and three more—20 to this point, as Mr. Dyer has identified them.

Now, if you want to suggest or claim others, which ones specifically?

I think I said I thought we understood.

I don't know that anybody reviewing the record will know just what you have in mind now.

Mr. Janes: I think that includes all that I had in mind.

Trial Examiner: Oh, twenty.

Mr. Janes: Yes.

Trial Examiner: I thought you were telling us perhaps that there were others.

Mr. Janes: No. I just wanted to make sure that it was clear that in addition to the corporations that Mr. Dyer mentioned specifically just now that there would be others [3451] related to these three corporations whom it would be claimed would be related to Darlington.

Trial Examiner: That is what I am asking about. Which others, when you say "others"?

Mr. Janes: None others. I think we can go on the basis of the 17 corporations.

Trial Examiner: 17 plus 3.

Mr. Janes: Yes.

Trial Examiner: But no others directly or indirectly related.

Mr. Janes: That is right.

* * *

[3452] Mr. Schoemer: According to information in our possession which we believe to be ac-

curate. As of October 1, 1956 there were 18 plants which had a personnel manager.

There were six plants which had no personnel manager. And there were four plants in which the personnel function is performed by the office manager.

Darlington is included in the first group.

In addition, Monarch Mills had a director of industrial relations, to whom the personnel managers at the Monarch and Otteray Plants reported.

Trial Examiner: Eighteen, six and four, give us a total of 28. I thought we had counted 27.

Mr. Schoemer: Well that is what gets me. Because I was aware of that. I am unable to explain the discrepancy except that I have four separate units listed for Pacolet.

Trial Examiner: My impression is that we had only three. I think it is important that we get the number of plants correct certainly.

Off the record.

(Discussion off the record)

[3453] Trial Examiner: Back on the record.

Let's say only that the check of the list of plants indicates that at one point there was a duplication and that Mr. Schoemer's figure of 18 should be changed to 17 plants which had a personnel manager; is that correct?

Mr. Schoemer: Yes, sir, that is right.

The other figures remain unchanged, as stated.

* * *

[3456] *Cross-Examination*

Q. (By Mr. Updike) Mr. Oeland, by whom are you now employed, sir? A. Presbyterian College, Clinton, South Carolina.

Q. And by whom—or how long have you been employed by them? A. Since November 1, 1957.

Q. That is November 1st a year ago? A. That is correct.

Q. Now, after you—after the liquidation of Darlington, [3457] did you have a discussion with Mr. Roger Milliken with respect to your continuation at Darlington some time in December or January—December of 1956 or January of 1957? A. I did, sir.

Q. Will you give us the substance of that conversation? A. It was when we were having the sale in December that I asked him.

Q. The auction sale? A. The auction sale, yes. I asked him what I could plan on for the future. He told me at that time that he thought it was a bad policy to demote a man and that he had no position similar to what I had been doing at Darlington to offer me.

And, therefore, I could consider myself—that I would make a change in employment.

Then I asked him at that time when I could expect to be through at Darlington. And he told me about March 1, 1957.

Shall I continue?

Q. All right.

Mr. Janes: Mr. Updike——

Q. (By Mr. Updike) What, if anything, happened between then and the date that you have given us with

respect to your employment by Presbyterian College as to the continuation of your salary? A. During the hearing in February, was it?——

[3458] Q. January and February. A. January and February.

During the hearing Mr. Milliken mentioned to me that this matter was going to be longer than he had anticipated, and that for the present we would continue on the same basis until a later decision was reached.

Q. Very good.

Now how long did you continue on Darlington's payroll at your salary as Treasurer? A. Until July 1957.

* * *

[3459] Q. (By Mr. Updike) Subsequent to October of 1957, you have not been on the payroll of Darlington in liquidation; is that right? A. Since October of 1957 I have not.

Q. Now, sir, would you give us somewhat more fully—it appears in the record I think from Mr. Milliken's testimony—your background in the Textile business up to the time that you become treasurer of Darlington. And would you start, please, with your work at Clifton? [3460] A. I went to work for Clifton Manufacturing Company October 1, 1927. I was Assistant Paymaster. During my stay there, I did various types of work, all types of office work, including accounting.

I spent my spare time on my own working in the mill in the afternoons and night. I would spend my spare time with the cotton department on learning how to grade staple cotton.

In the depression, I was put in charge of all the repair and maintenance of the villages and some of the major

maintenance work in the mill.

Q. When you say the depression, I take it that is the early 30s? A. The early 30s, yes.

Q. Now, did you in connection with your work with cotton have any experience with the buying of cotton or working with the men who did buy the cotton? A. Well, I was closely associated in a small office. And so I knew all the ramifications of purchases and records.

Q. All right. Now subsequent to Clifton, at some point your next employer, as I understand it, was the Riegel Textile Corporation? A. Yes.

In 1940 I went to the Ware Shoals Company—a manufacturing company, which was later—it later became part of the Riegel Textile Corporation.

[3461] My job there at first was office manager. As has been testified, I was later made comptroller.

The last year I was there, I was in charge of industrial relations.

Q. Now, was either Clifton or Riegel a unionized concern? A. Clifton had not signed a contract with the union when I left there. But they were in the midst of negotiating.

Q. At that time? A. At that time, yes.

Q. Now, when was it that you——

Trial Examiner: What about Riegel?

The Witness: Riegel had no labor contract while I was there.

Q. (By Mr. Updike) Now, when was it, Mr. Oeland, that you left Riegel to go to your next employer? And who was that employer? A. It was in March 1946 that I went to Monarch Mills in Union, South Carolina.

Q. Who was the Treasurer of Monarch at that time? A. Mr. W. A. L. Sibley.

Q. Had you been a personal friend of Mr. Sibley's for some time prior to that time? A. Yes. I had been a personal friend. And he for part of the time I was at Ware Shoals was the manager of Ware Shoals Manufacturing Company.

[3462] Q. Now, will you describe generally your duties when you arrived at Monarch? A. I was controller there of the Monarch Mills which of course included all of the accounting for the three plants that has been referred to.

Q. At Monarch itself and Lockhart and Otteray? A. Yes. I was also controller for the Lockhart Power Company, a wholly owned subsidiary of Monarch Mills. I was also controller for the Jonesville Products Company.

Q. That is the wholly owned subsidiary which the testimony indicates made diapers and crib sheets? Or rather they sewed them? A. That is right.

Q. Now, during the course of your stay at Monarch, what experience, if any, did you have with respect to the operation of the Otteray Plant in other than an accounting way? A. A year or possibly two years before I went to Darlington, the manager of the Otteray Plant took the position with another outfit. And I asked Mr. Sibley if he would let me take over the job as manager along with my other responsibilities.

Q. And did you thereafter do that? A. I did that until I left Monarch.

Q. Until you left Monarch to come as treasurer at Darlington; is that right? [3463] A. That is right.

Q. And that was I think you have told us in July of 1951? A. I actually went to work at Darlington August

the first, 1951. I spent a few days down there prior to going to work.

Q. Now, you told Mr. Dyer yesterday your conversation with Mr. Sibley and with Mr. Roger Milliken leading up to the tendering to you of the opportunity to become treasurer at Darlington:

Do you recall that? A. Yes, I do.

Q. Now, did you have any discussion with Mr. Milliken concerning the nature and scope of your authority and responsibilities at Darlington? A. Yes.

Q. Will you please tell us what that was and when was it with respect to the conversation that you told us about yesterday? A. I think I mentioned the fact that when they had the first conversation that I was in the room with Mr. Milliken and Mr. Sibley.

At the conclusion of that, Mr. Milliken suggested I go in my office and he would be by to see me in a few minutes. And he came by my office, and he had another conversation with me.

Q. Will you give us the substance of that conversation? [3464] A. He told me at that time that I would be in complete charge of Darlington; that I would be responsible for its costs, its employment of personnel, its purchasing both of raw materials and supplies and so forth; that I would be responsible for its sales; and that if I didn't make money I wouldn't stay there.

He further said that if I wanted his advice I could get it; but if I accepted his advice it would be my decision.

Trial Examiner: Just a moment.

Q. (By Mr. Updike) Now, Mr. Oeland, I take it with the background of that discussion as to your authority and

the scope of your responsibilities, you went to work as treasurer at Darlington; is that right? A. That is right.

Q. Now, in your testimony yesterday, there are certain points that I would like to pick up briefly. First of all, Mr. Dyer questioned you concerning a number of accounts where he exhibited some sheets to you which were not put in the record in this case and which sheets bore a number of some sort. Do you recall that? A. Yes.

Q. Now, who applied those number designations and about when were they applied, so far as your knowledge goes? A. They had some account numbers.

Q. Who is "they". You mean Darlington? [3465] A. Darlington Manufacturing Department.

—when I went there. And to simplify them as far as I was concerned, I changed them to the ones that were shown there yesterday.

Q. So the ones that were shown yesterday were applied by you and consistently used throughout the period up through Darlington's liquidation; would that be right? A. That is right. I had had a good deal of experience in this line over at Ware Shoals where they had a termendous amount of accounts. And I worked on account numbers over there so that the first digit would indicate the department; the second digit would indicate certain things, and on down the line. And so I had certain ideas about those things.

That is the reason I worked on them personally.

Q. Now, do you also recall yesterday testifying with respect to the use of some forms at Darlington, some of which I think were printed at the printing plant at Abbeville? A. Yes.

Q. Now, to what extent, if any, did you bring to Darlington forms out of your prior experience at Riegel and Clifton and Monarch? A. I had files that I would pick up forms and information and reports by these different categories.

Q. And did you use those in setting up whatever forms you needed at Darlington from time to time? [3466] A. Whenever I had occasion to need them.

A lot of forms in the mill were there when I went there. And when you needed a new form, invariably the form that you had somewhere else would have to have changes, sometimes major and sometimes slight, to suit the situation at the particular plant.

Q. Very well. Now, in another connection, sir, you will recall there was a series of questions about Darlington writing up policies.

I show you General Counsel's O-4 merely to refresh your recollection as to the document used to refresh your recollection yesterday when you testified? A. I mentioned the fact that the last year I was at Ware Shoals I was head of industrial relations.

Q. Yes, sir. I would like to pose a question if I may: Will you tell the Examiner in your own words and in your own way what you did with respect to the development of policies at Darlington? A. I suggested the same plan to the supervision at Darlington that I had used at Ware Shoals. That is, if you are going to write a policy, actually the people that should write it are the supervision. And so you select a subject. And anybody, taking what information they could gather here and there, would sit down and do a rough draft of a proposed policy that they thought would fit at that particular plant.

[3467] This rough draft, then, was distributed to supervision in a policy meeting. And it was discussed word by word and item by item, with the understanding that if that supervision approved that policy, they would go out and back it up in the mill and sell it to the employees. And so it would take several weeks, maybe several months, on

certain policies, to get complete agreement as to the wording, as to the things that should be included, and so forth.

What I am saying is that the first rough draft would be revised. And then at the next policy meeting other suggestions would be gathered, and it would be revised. And after the supervision at that particular plant—we are talking about Darlington—could agree to a policy, it was then brought to my desk, and I went over it in detail. I had no part in the other meetings.

* * *

[3474] Q. (By Mr. Updike) Now, Mr. Oeland, immediately preceding the sale of this warp yarn to which you testified yesterday to Monarch, had your operations at Darlington gotten out of balance with respect to warp yarn? A. Yes, they had.

Q. And to what extent did you shop around in search of a market for them—for your warp yarns? A. I tried anyplace that I knew of that I might dispose of this yarn.

Q. Had you from time to time sought bids from Islin Jefferson and Martha Mills with respect to excess warp yarns? A. Yes. Purchases and sales.

Q. And conversely were there times when, instead of having an excess of warp yarns, the reverse was true; you had an [3475] insufficiency? A. Yes, as stated a moment ago.

Q. Well, did you in that connection also seek offers of yarn from Islin-Jefferson? A. Yes.

* * *

[3477] Q. Very good, sir. Thank you.

I think you told us yesterday that Mr. Roger Milliken came to Darlington only perhaps three or four times a year and then generally in connection with a director's meeting or some such meeting? A. Yes.

Q. Let's take 1955, which was the last full year, I guess, of actual operations.

How many times would you say that you talked with Mr. Roger Milliken on the telephone in that year? A. I would say five or six times.

Q. In the course of a year? A. Yes.

Q. Now on what other occasions would you talk to Mr. Milliken? [3478] A. Perhaps at Treasurer's meetings I may have had some private conversations with him there.

Q. And those were what, three or four a year? A. I think four a year, wasn't it? Quarterly I think is what they were.

Q. And have we now covered the extent of your contacts with Mr. Milliken other than as appears in the record here through your letters, so-called newsletters, and so-called operations reports?

Mr. Dyer: I think you might include also testimony of Mr. Milliken's visits to the mills and the director's meetings.

Mr. Updike: Well, I have just brought that out, I thought.

Mr. Dyer: I thought you just brought out treasurer's meetings.

Mr. Updike: We will put them altogether if you will.

We have personal visits in connection with the director's meetings which are three or four times a year.

The Witness: And stockholders, they are the same.

Q. (By Mr. Updike) Well the annual meeting of directors and the annual meeting of stockholders would be the same occasion? A. That is right.

Q. Then we have four treasurers meetings? A. That is right.

[3479] Q. And we have, I think you said, five or six telephone calls in the course of a year? A. That is right.

Trial Examiner: And the other contacts through letters, including newsletters.

Mr. Updike: Yes. Through the witness' letters and these so-called operational reports.

The Witness: And occasionally I might run into him in the New York Office when I was there. But very seldom would we have any discussion of business matters as far as Darlington was concerned. Those occasions were rare.

* * *

[3480] Q. I show you Respondent's Exhibit N-2, and I draw your attention particularly to the section of this handbook marked or headed "Our products and their uses", and the full paragraph immediately following that.

Would you look at that please, sir? A. "Our products and their uses", did you say?

Q. Yes. At the top of page 7. Would you look at the paragraph immediately following it? A. Yes.

Q. Would you please read into the record, sir, the reference [3481] there to Deering, Milliken and Company, Inc? A. "Our fabrics are sold through our selling agent, Deering, Milliken and Company, Inc., New York."

Q. Now, so far as you are aware is that the only reference to Deering, Milliken and Company in the entire handbook? A. That is the only one I can find.

Q. Mr. Oeland, you have told us of your conversation with Mr. Milliken in July of 1951 with respect to your area of authority and responsibility at Darlington? A. Yes.

Q. Do you recall that, sir? A. Yes.

Q. And with the exception of such things as are reserved to the Board of Directors by corporate practice; and I guess with the possible exception, if it is an exception, of the capital expenditures during the period from August of 1951 through October of 1956, did you as Treasurer of Darlington in your day in and day out operations act according to your judgment as the executive head of that business? A. I did.

Q Now, do you recall at the earlier hearings in this case that Mr. Zimny, who was then of Counsel for the Charging Party, making an offer of proof? Do you recall that? A. Yes, sir.

Q. I would like to ask you some questions relating to [3482] his claims there as to the facts.

Now, did you, while you were at Darlington, in the course of the activities in which, let us say the departments of the Service Corporation were involved, did you consult them for their advice? A. Yes.

Q. Did you at any time believe or have the view that they were controlling what you did?

* * * *

[3483] The Witness: No.

Q. (By Mr. Updike) I have asked you, sir, how often you saw or talked with Mr. Roger Milliken? Now how often did you see or talk with Mr. Gerrish Milliken who was a member of the Darlington Board? A. I would probably see him in the office when I went to New York and speak to him. But no discussion at Darlington.

Q. Mr. Minot Milliken? A. On a few occasions I would have something to discuss with Mr. Minot Milliken. Either by telephone or while I was in New York. These

mostly dealt with matters pertaining to accounts receivable and changing of D. M. notes into the bank account, or things of that nature.

Q. All right.

Mr. Francis Kingsley? A. Again I would see him if he happened to be in the office in New York. But I would only speak to him. Never discuss the business.

Q. Mr. Hatch? A. Very seldom did I see him nor did I discuss any Darlington matters with him.

Q. Other than at Director's meetings where these gentlemen were present? A. That is correct.

* * *

[3485] Trial Examiner: Did any of those other coporations, the Deering, Milliken Service Corporation, the Research Corporation, or other mills which sold through Deering, Milliken take any part in Darlington's labor relations?

The Witness: No.

Q. (By Mr. Updike) For example, sir, you were asked yesterday about the activities of the Deering, Milliken Service Corporation's industrial engineering department working at Darlington.

And I believe that your tesimony was that what job assignments or new plans were laid out were actually done by Darlington's Industrial Engineering Department; is that right sir? A. That is what I testified.

Q. And to what extent did the Service Corporation's Industrial Engineering Department work with Darlington on those matters? A. As adivce in methods or checking over.

Q. Reviewing what has been done? [3486] A. Yes, reviewing what has been done.

Trial Examiner: We will take a 5-minute recess.

(Whereupon, a short recess was taken.)

Trial Examiner: On the record.

Q. (By Mr. Updike) Mr. Oeland, again referring to Mr. Zimny's offer of proof—I am now referring to page 238—he stated that the charging party would prove that Deering, Milliken and Company "enforces and maintains a uniformity of work assignments, work efficiency, job classification, wage rates, employee training programs, and employee recruitment."

Using the term "employee" in the sense of a non-supervisory employee, when you were at Darlington, did you or anyone at Darlington recruit any employees through any of the Services that have been testified to in this case? A. No.

Q. Did you at Darlington so far as you are aware have work assignments that were uniform with those in any other mill? A. No.

* * *

[3487] The Witness: I had in mind job content. You have weavers. But the job at Darlington as far as weavers is concerned is the duties and the way they perform it, has no pattern at all compared to any other mill.

[3488] Q. (By Mr. Updike) At least any other mill that you had ever been connected with; is that right? A. That is right.

Q. Again Mr. Zimny offered to prove that "Deering, Milliken maintained and enforced in its constituent mills, including Darlington, uniformity in all other terms and

conditions of employment, including hourly, piece, and incentive wage rates, shift premiums, and plant minimums."

So far as you are aware, sir, were the hourly, piece and incentive wage rates at Darlington uniform with those at any other mill selling through Deering, Milliken and Company? A. No, sir.

Q. Would your answer be the same for shift premiums and plant minimums? A. Yes.

* * *

[3492] Q. (By Mr. Updike) Do you recall testifying yesterday [3493] with respect to the prospective employment of a man named Jimmy Wells? A. Yes.

Q. Who had been working at Pacolet? A. Gaffney.

Q. Gaffney was it? A. Yes.

Q. Well, tell us in sequence what your interviews were and how you finally filled the post? A. It was for the master mechanics job at Darlington. The records show that we employed Jimmy Wells. He came down for an interview and was employed. But a day or two after he had accepted the job, he called and said that he had been offered a job in——

Q. He called? A. Yes. Mr. Wells called.

Q. Yes. A. And said he had been offered a job in Gainsville that he felt had better possibilities than Darlington had, and he would like to request our consideration in relieving him of his responsibility at Darlington, which we agreed to.

* * *

[3495] Q. Now speaking generally, Mr. Oeland, about how many men would you say that you had hired from concerns that had no connection with any mill selling through Deering, Milliken and Company for supervisory posts? A.

This includes the ones that were there when I went to Darlington.

Q. Yes, sir.

Trial Examiner: No.

Mr. Dyer: No.

Mr. Janes: He couldn't have hired them.

Mr. Updike: Well, he had the responsibility for either keeping them or not keeping them, as the case may be.

[3496] Mr. Updike: So let's exclude those for a moment?

The Witness: All right.

Trial Examiner: Was that question to exclude Deering, Milliken; or did it refer to Deering, Milliken Mills?

Mr. Updike: Mills selling through Deering, Milliken was the question?

Trial Examiner: Yes.

The Witness: There was four out of the eighteen supervisors and second hands employed in this period that were hired outside of Deering, Milliken.

Mr. Updike: All right.

Q. (By Mr. Updike) Now were those people employed outside of the mills selling through Deering, Milliken and Company, outside of the Research and Service Corporations, and outside of Deering, Milliken and Company itself? A. That is right.

Trial Examiner: I think the witness has told us there were 18 supervisors and second hands that he

hired as supervisors, four who had not previously, and so on.

What about the other fourteen?

Q. (By Mr. Updike) How many of the other fourteen were there either when you came there or were promoted out of Darlington's own force?

Trial Examiner: Why can't we ask how many were hired from other D. M. Mills and/or the Service Corporation, the [3497] Research Corporation, or D. M. and Company?

Mr. Updike: All right.

During the same period?

The Witness: Four.

Mr. Updike: I am not sure that "hired from" is quite the way to phrase it.

Trial Examiner: Well, "had previously been employed by".

Mr. Updike: Previously employed by, all right.

Trial Examiner: And your answer is four?

The Witness: Four, yes.

And I am including in that the technical superintendent, which would not be considered in this eighteen.

* * *

The Witness: I would like to state that I left out Mr. Granger in this deal. In other words, I didn't consider I had hired him. He didn't stay there long enough. He got in and out so quick that I didn't include him in that number, either the job or the man.

* * *

[3498] Q. (By Mr. Schoemer) Mr. Oeland, do you recall Mr. Milliken's examination in relation to Exhibit General Counsel's N-63 in which he referred to a wage discussion held in August of 1955? A. Yes.

Q. What was that so-called wage discussion that occurred at that time? A. It was a meeting I think that has been referred to at Drayton Mills, Drayton, South Carolina.

Q. Who attended the meeting?

Not by name, but generally? A. Treasurers, and managers, and in my case I carried along a superintendent, and I think a lot of the others did.

Q. What was the purpose of the meeting, Mr. Oeland? A. The purpose of the meeting was—we had had some firm or chain which had announced a general increase in wages.

Q. Do you remember who it was? A. As I remember it was Burlington.

Q. Do you remember the amount of increase? A. As I remember it was an average of 5 cents an hour.

And we went there to get some information for comparative value of wages paid by a number of mills outside of the Deering, Milliken groups and those being paid—that is, in [3499] the cotton mills now of Deering, Milliken.

Q. Who prepared the information that you obtained, Mr. Oeland? A. Mr. Lowry. His department prepared it.

Q. Who presented it at the meeting? A. Somebody in that department.

It was presented in charts, just big charts put up there, with the name of the mill, broken down by categories of jobs. And the main questions discussed were "are you sure this is right here" or is that right? It was a question of where the information came from and how accurate it was.

Q. Did the charts show that uniform wages were being paid at all the mills included on the charts? A. No.

Q. Let's break that down a little bit further. Did the charts disclose uniform wages on the part of all the mills selling through Deering, Milliken? A. No.

Q. Did it disclose—did they disclose uniform wages on the part of other mills which we have called outside mills from time to time? A. No.

Q. Now was there any discussion—— A. And when we speak of uniformity, I would like to put this in. For instance, there always has been some reasonable uniformity in, for instance, loom fixers' pay. But as I [3500] remember, there again Darlington was out of line, out of step there. They pay on loom fixers, even that one category, usually is consistent. Other mills were out of step too.

Q. Do you mean the uniformity as to loom fixers pay existed only on the part of the D. M. Mills? A. It was not uniform there.

* * *

[3501] Q. (By Mr. Schoemer) Now, Mr. Oeland, were Darlington's wages shown on one or more of those charts? A. They were.

Q. Was there any discussion at the meeting as to the amount of increase that was going to be given by Darlington in the various job classifications? A. No.

[3502] Q. Was there any discussion as to the amount of increase that was to be given by any of the other mills represented at the meeting in the various job classifications? A. No.

Q. Subsequently was a decision made as to the increases to be made at Darlington? A. Yes.

Q. Who made that decision? A. I did.

Q. Whom did you consult before making it? A. I had a discussion with the overseers and superintendents.

Q. Did you ever discuss it with Mr. Milliken? A. No.

Q. Was the increase that was actually given at Darlington, if you know, the same as the increase given at any other mills selling through Deering, Milliken? A. Having lived through it, I would think that the increase at Darlington was different from any other mills on the outside or in the Deering, Milliken Mills.

Q. Well, did you give a flat across-the-board five cent an hour increase at Darlington? A. No.

Q. How much did your increase average out to? A. As I remember it, it was about 3.75 cents an hour.

[3503] Q. Well, can you explain how that happened, Mr. Oeland? A. I took down notes from this chart as to the categories that we would have as compared to others. And as has been previously testified, I found out that our base rate for a number of the piece work jobs was higher than any mill in D.M. or any mill in competition.

I had also noted that on the other side of the extreme, we probably had more jobs that were below a dollar an hour than any D.M. mills plus competition.

And I was faced with the problem of what to do at Darlington; whether to increase a full five cents an hour on these jobs that were out of line and thus throw ourselves further out of line as far as competition was concerned, or to try to get an average of five cents an hour by not increasing those particular jobs and bringing it up on the lower end of the line which was given—there were so many less employees on that end of the line it would give quite an increase to them.

The reason I remember it so distinctly I stayed awake over it about three nights.

Q. Now, prior to reaching and announcing your decision as to the amount of the increase, did you discuss it with anybody who was not employed by Darlington Manufacturing Company? A. I don't know that I did. It seems to stick in my mind that I privately discussed it with Mr. Sibley at Monarch; not what I did, but if he could throw any light on the problem [3504] as far as the decision I had to make.

Q. You and Mr. Sibley were old friends you have testified? A. That is right.

Q. He was formerly your superior at Monarch, is that right? A. That is correct.

Q. Which was the nearest D.M. Mill to Darlington geographically speaking? A. Hartsville.

Q. Did you ever discuss it with the Treasurer of Hartsville, this subject of the wage increase? A. I don't remember any discussion that I had with him.

Q. Do you have any recollection of what kind of an increase was given out at Hartsville Cotton Mill? A. I don't remember—well I do remember on a few jobs where there was a slight difference between Hartsville and ourselves that I did try to make up that slight difference. But as I remeber there was no particular pattern anywhere along the line.

Mr. Janes: May I have the answer read?

(The answer of witness was read by the reporter)

Q. (By Mr. Schoemer) Well did you discuss the matter of the wage increase in any way subsequent to the meeting that you have described with anybody connected with the Service Corporation? A. No. They came there and got

some information about [3505] our wages but I don't remember who came or any discussion was held.

Q. When was that, before or after the increases? A. Before the charts were prepared.

Q. Did you have any such discussion with anybody connected with the Research Corporation? A. No.

Q. Or with Deering, Milliken and Company in New York? A. No.

* * *

[3506] Q. (By Mr. Schoemer) Mr. Oeland I direct your attention first to the fourth paragraph on the first page of this letter (Res. Exhibit O-1). Will you read the first sentence of that paragraph? A. "It has been necessary for us to stop the weave room after two 8-hour shifts the last two weeks."

Q. What does that mean, Mr. Oeland? A. It means that two weeks the weave room had not run a full 144 hours.

Q. Who made the decision as to the amount of time the weave room would run? A. I did.

Q. Whom did you discuss that decision with? A. Nobody.

Q. Did you ever discuss it with Mr. Milliken? A. No.

Q. Anybody from the Service Corporation? A. No.

Q. I direct your attention to the next paragraph of the same letter. Will you read that sentence, please? A. "It is our plan to shut down the 24 hours of July 4th in order to save the premium pay for this holiday."

Q. Whose decision was that? A. Mine.

Q. Whom did you consult with before making it? [3507] A. Nobody.

Q. Not Mr. Milliken? A. No.

Q. Nor the Service Corporation? A. No.

Q. Will you turn to the eighth paragraph of the letter which appears on the next page? Would you read that paragraph into the record beginning "We turned down—"? A. "We turned down an offer for a million yards of 109 x 58, 3.33 broadcloth for fourth quarter for 22¾s cents from Stein-Tex. We are presently asking 23 cents, and with the uncertainty of what we will have to pay for cotton and the fact that both 80-square and 100 x 60 broadcloth having gone up, we are holding out for the one/fourth cent more.

"Al May said over the phone yesterday we had lost the order to our competitors."

Q. That was a pretty big order that was offered to you, wasn't it? A. Yes.

Q. You didn't get million yard contracts every day, did you? A. No.

Q. Well now who made this decision to turn down the price that was offered? A. I did.

Q. Whom did you consult on that? A. Nobody.

[3508] Q. Whom did you talk to about it? A. Nobody except Mr. May.

Q. Did you ever talk to Mr. Milliken about it? A. No.

Q. Did you discuss it with anybody else at Deering, Milliken in New York? A. No.

Q. As I understand it, Mr. May subsequently reported to you that the order had been lost to your competitors; is that correct? A. Yes.

Q. Do you remember who the competitor was? A. No. As has been testified, there were about three other mills, wasn't there, making that particular construction, Inman, Arcade and—did Joanna make it?

Anyway they were mills outside the Deering, Milliken Group.

Trial Examiner: Excuse me.

Did you discuss this with Mr. May before you turned the order down?

The Witness: Yes. He was probably bringing a lot of pressure on me to take it.

Trial Examiner: What do you mean by "probably"?

The Witness: Well they wanted to sell goods. That was their job. My job was to make them and sell them at a profit.

[3509] Mr. Schoemer: Profit to whom?

The Witness: To Darlington Manufacturing Company.

Mr. Schoemer: And its stockholders?

The Witness: That is true.

Q. (By Mr. Schoemer) Now Mr. Oeland it was your practice to discuss these matters of sales with Mr. May and Mr. Elliot Miller during this period of time, was it not? A. That is true.

And to make periodic trips to New York and discuss with customers what they were doing and what they wanted and how they felt about the market.

Q. Did you discuss with Messrs. May and Miller anything but matters pertaining to the sales of Darlington's production? A. That and any questions of quality that might come up with complaints from customers and things like that—customer relationship.

Q. In other words is it fair to say that your discussion with them was confined to sales and matters related to sales of goods? A. That is right.

Q. Did you ever discuss wages, hours, or working conditions at the Darlington Plant with either of them? A. No.

Q. Now, did you hear Mr. Kable testify in this case? A. Yes.

[3510] Q. Did you hear Mr. Kable testify as to the extent of the contract between his office and you with respect to tax matters, the writing of minutes, et cetera? A. Yes.

Q. Now, did you have any other contact with Mr. Kable except such as he has described in his testimony? A. I think not.

Q. Did you ever discuss wages, hours or working conditions at Darlington Plant with Mr. Kable? A. No.

Q. Would the same answer hold true for Mr. Miller? A. Yes.

Q. Now so far as Mr. Flanigan is concerned, he has not actually testified in this case. However, did you have any dealings with Mr. Flanigan or with the controller's division of Deering, Milliken and Company except such as has been generally identified in this record by the other witnesses? A. That is right.

Q. Did you ever discuss wages, hours and working conditions of Darlington's employees with Mr. Flanigan? A. No.

Q. Did you ever discuss that subject with any person employed by Deering, Milliken and Company of New York except Mr. Roger Milliken? A. No.

* * *

[3511] Q. Now, taking the Gaffney case first, do you remember the testimony that you agreed to pay Gaffney two cents a yard on the goods that they made to fulfill the unfilled portion of your contract? A. That is right.

Q. Why did you make such agreement, Mr. Oeland? A. There were several things that entered into this.

In the first place, this particular double width cloth we had never at Darlington been able to make it light enough; because as you understand, 80 inches of filling was across that cloth. And it comprised a good part of its weight. We had to make a very light filling to try to get the weight of the cloth down. If we made it too heavy, we were giving [3512] away cotton. We were never able to get that filling light enough because of the fact that if you made it too light, your filling would break so easy, don't you see. So Mr. Norton didn't want to take on that particular construction. He knew what he would be walking into.

And he had a construction on, as has been stated that had some similarity to it, except that his construction as I remember was heavier. And in figuring cost and constructions, you always bring them to a pound cost. And if you had a heavier construction it cost you more per pound because of the cotton and other things that went into it.

So when I analyzed again, he put our construction in this mill, it would have meant probably a different warp number—number of ends in the warp.

As I said it would have meant a different filling that was very light, and he would have had to have kept up—or identified which sometimes gets to be a problem, two different constructions.

Again it was not for too large amount. As I remember something over a hundred thousand yards. And adding all these things up, had I been sitting in Mr. Norton's chair I felt that all said and done, he was doing me very fair. And I had to make some adjustment. As has been brought out, we tried to go out in the other competition and get this. We tried to get the customer to cancel. We tried every angle.

[3513] And we were up against it.

And so this seemed like a solution that I was glad to accept as far as Darlington and Darlington's stockholders, which in every case every decision I made was based on whether if Darlington money was mine would you accept or reject.

What would you do?

So adding all that up, I accepted the two cents a yard which I felt was a very fair settlement.

Q. (By Mr. Schoemer) Well did the same reasoning govern your decision as to the 3.90 poplin which was—on which a contract was filled by Monarch? A. That is true.

You have got to remember on the 3.90 poplins against every decision on selling cloth is almost based from day to day. The cotton market can change. Even if the cotton market doesn't change, you remember we brought in that basis can change.

In other words, the basis has to do with the supply and demand of the particular grade of cotton. You could have an unusual storm today in California where you have got irrigated cotton and wake up in the morning and find out that the better grades of cotton—irrigated cotton in California has changed. That is how quickly it can change. So when you say you are satisfied, I figured all these conditions again; and I felt like the settlement of a quarter cent a yard was [3514] very fair.

And I further felt like that Mr. Sibley was doing me a favor to be willing to help me out in fulfilling the contract.

Q. And did you similarly feel that Gaffney and the New Holland Plant of Pacolet were doing Darlington a favor? A. I did.

Mr. Schoemer: Thank you, Mr. Oeland. That is all.

Q. (By Mr. Updike) Mr. Oeland, I think the record shows that you were a stockholder at Darlington; is that correct? A. That is true.

Q. And I think there is a reference also in the record to Mr. Henry Simpson as the owner of some 20,000 shares? A. Yes.

Q. Is that approximately your recollection? A. The stockholders that he controls and personally, he and his family, about 20,000 shares, yes.

* * *

[3516] *Redirect Examination*

Q. (By Mr. Dyer) At the annual stockholders meetings which were held I think in January of each year, can you tell us who besides the directors showed up at the stockholder's meetings? A. There were occasions when we had outside that group. But there were not too many.

Trial Examiner: When you say "outside"—you mean stockholders?

The Witness: Stockholders——

Trial Examiner: You are speaking only of stockholders; stockholders who were not directors?

The Witness: That is right.

Q. (By Mr. Dyer) Let me show you the minutes for the 1955 meeting. And the minutes for the 1956 meeting. And let me see if you recall on either occasion there was anybody else there except the directors at the stockholder's meetings? A. I don't see any reference in here to it. But I have a [3517] feeling——

Q. Well I am thinking that this paragraph here might help you where you say the number of shares represented

in person and those by proxy. A. Yes. But I would have to have a list of those to see whether those shares represented in person were only the directors. You see, they could have been there and it wouldn't show up here if they were there.

Q. Well just from looking this over, do you recall anybody else being at either of those meetings besides directors? A. We had a man from Charlotte that came down to several meetings. And in one of these meetings—I am trying to think—I think one of the men in the office that owned some stock was there at the meeting.

Q. Those are about the only two people that you know of that appeared besides the directors? A. Now these are stockholder meetings. Other than the one that——

Q. Other than the liquidation meeting I am talking about. A. Yes. There were very few. And at the moment that is all I can recall.

I would like to say if I may that Mr. Lyles who was a director usually voted the Henry Simpson Stock.

Q. Now you talked about this wage discussing meeting——

Mr. Updike: Before you go into that, is it agreed that [3518] Mr. Lyles is the gentleman who is referred to at the early hearings as a director resident in Darlington, and who was the head of one of the Belk-Simpson Stores located in Darlington?

Trial Examiner: He was not—what phrase do you want to use? —related to the Milliken family?

Mr. Updike: Not connected in any way, no, sir.

* * *

[3519] ROGER MILLIKEN resumed the witness stand and having been previously duly sworn was examined and testified further as follows:

Cross-Examination

Q. (By Mr. Updike) Mr. Milliken, can we go briefly for a moment into the circumstances by which Mr. Lyles became a director of Darlington? A. Yes, sir. At stockholder's meetings of Darlington that I attended in the beginning, Mr. Henry Simpson was accustomed to being present.

Q. Is this before the time when Mr. Oeland was the treasurer? A. I have just checked with Mr. Oeland on that because he did not remember Mr. Henry Simpson having been there. And I did. And I wanted to see if we couldn't reconcile our memories.

At one of these meetings, Mr. Henry Simpson said that it was impossible for him to always come down to Darlington at the time of the stockholder's meeting and that because of his very substantial monetary interest as a stockholder of Darlington, he wanted to recommend to the stockholders that [3520] they elect Mr. Lyles as a director of the company to represent his interests. When I discussed this with Mr. Oeland right after his last testimony he said that Mr. Lyles was elected a director at the first stockholder's meeting of the Darlington Manufacturing Company; that he, Mr. Oeland, attended.

Q. Was Mr. Lyles a director from that time on through to the liquidation meeting in October of 1956? A. Yes, sir, he was.

Q. Now, Mr. Milliken, you heard Mr. Oeland's testimony a little bit earlier with respect to the meeting between himself and yourself in July 1951 with respect to his becoming treasurer at Darlington, did you not? A. Yes, sir, I did.

Q. Is your recollection substantially in accord with his with respect to that conversation? A. Yes, it is.

* * *

[3525] Q. (By Mr. Updike) Now, Mr. Milliken, in connection with the activities of Deering, Milliken and Company as a factor for the mills which sell through it, has Deering, Milliken and Company ever guaranteed a loan for Darlington or any of these mills to your recollection? A. No, sir, it has not.

Q. Has any mill selling through Deering, Milliken and Company ever guaranteed a loan for any other mill within your recollection? A. No, sir.

Q. I believe that it appears that Arthur Andersen and Company acted as auditors for many, if not all, of the mills selling through Deering, Milliken and Company during the years that we have been considering here. Is that about right? A. I believe that is correct. I don't know whether it was at that time or not but Lybrand, Ross Brothers and Montgomery also audited for a long period of time for some of the mills.

Q. Did Arthur Andersen and Company ever prepare any consolidated statement with respect to Deering, Milliken and Company in the mills that sell through it? A. No, sir.

Q. Are any of the treasurers of the mills which sell through Deering, Milliken and Company on the Board of Directors of Deering, Milliken and Company? [3526] A. No.

Q. Incidentally, does Deering, Milliken and Company own any stock in the Cot-Wool Manufacturing Company? A. No, sir it does not.

Mr. Updike: I have referred, Mr. Examiner, to some material on the subject of factoring. And I now offer as Respondent's Exhibit N-3 photostats of the title page and pages 49 and 50 of a volume en-

titled "The role of factoring in modern business finance."

* * *

[3533] Trial Examiner: Well that, Gentlemen, is just one other difficulty that I must assume. If it is hard to tell, somebody will have to make the effort in any event. But as far as the relevancy of the—or the admissibility of it at this time is concerned, I think it should be received in evidence. The objections are overruled.

(The document above-referred to was marked General Counsel's N-3 for identification and received in evidence.)

Mr. Updike: Shall I proceed, sir?

Trial Examiner: Yes. Please.

I am wondering to what extent this witness can tell us about——

Mr. Updike: I plan to do that, sir. I am going to [3534] follow testimony by the witness after having laid this general foundation—testimony by the witness from his personal experience.

Mr. Dyer: Mr. Examiner, as to any questions relating to this, I will take a continuing objection.

Trial Examiner: Oh, yes.

Mr. Updike: I draw your attention, Mr. Buchanan, in addition to the introductory material which I read, to the following: There are a whole series of paragraphs which are lettered and which are introduced with the following language: "The varied nature of the services which a factor may perform for his clients in the connection with the advising or counselling functions are indicated in the following statement."

Trial Examiner: Excuse me.

Q. (By Mr. Updike) I direct your attention to subparagraph "B" "Some factors will conduct market studies to determine if a mill is getting its share of the market and if not to find out why and suggest corrective measures to the mill."

"E": "Progressive reliable factors seek to aid their accounts on the basis of personal service almost as a management consultant. In addition to helping a mill with long range financial planning, they will counsel the clients on production, sales, and distribution plans."

"They may assist with organizational matters, show a [3535] mill how to streamline its office procedures, or help in setting up a budget."

"F": "They have helped with workload analyses and other industrial engineering functions. They have surveyed mills and advised on machinery replacement and modernization programs."

Mr. Updike: I next pass to Subdivision "H" in parentheses, which is at the top of page 50.

"In addition, factors help arrange banking connections, may offer suggestions on tax matters, pension plans, trust funds for company officials, et cetera."——

Trial Examiner: I am interested in that "et cetera".

Mr. Updike: Yes.

"Much or all of this counselling is provided free of charge."

Then the full width paragraph, the opening sentence:

"As indicated by this detailed listing, these services are specific rather than general in nature. For

example, the factor knows the amount and the trend of his client's sales for each section of the country. He may compare these figures with those from Government and other sources, showing the total sales volume and trend for the industry as a whole in each section and nationally.

"He is in a position to provide his client with valuable information applying particularly to his situation and [3536] to offer specific suggestions and counsel."

* * *

[3541] Mr. Schoemer: Mr. Janes, yesterday when I was responding to some of the question you had asked about the prevalance of certain wage practices and working conditions in some of the other mills, I said that I had no information as to whether or not any year-end bonuses were paid in the other mills and that I would try to get you an authoritative answer to that. I have not succeeded in doing so, in that I have not located anybody who is quite certain of the answer. And the only way to do it would be to get in touch with the various mills, which is obviously impossible within the time available.

However, it appears to be the fact—and I stress the word "appears"—that at none of the mills selling through Deering, Milliken during the years in question was a cash bonus paid to the hourly paid employees at Christmas time or year-end.

* * *

[3452] Q. (By Mr. Updike) You may recall in connection with the testimony of Mr. Minot Milliken who was the first witness in what seems to be a number of ages ago

in this case, a question arose with respect to the normal and customary procedure by concerns which both sell and factor in this industry.

Do you recall those questions and the answers? A. Some of them, yes, sir.

Q. Generally speaking? A. Yes, sir.

Q. Now, have you at my request made a list of concerns which do both sell and factor in the market in New York? A. Yes, sir.

Q. The textile market? A. Yes, sir.

Q. Would you give us the names, please?

Mr. Janes: Just one moment.

[3543] I would like to put my objection on the record possibly in the same terms as I made earlier in the hearing on the grounds that this is of no help whatsoever for us to determine whether there was a single employer enterprise in this particular case.

Trial Examiner: Overruled.

Q. (By Mr. Updike) My question is: Do you have a list of those that engage both in selling and in factoring with respect to textile mills? A. Yes, sir, I do.

Q. May we have them please? A. The principal competitors of Deering, Milliken and Company are Islin-Jefferson, Joshua Bailey; Wellington Sears; Leslie Catlin; Avondale Mills; Woodward-Baldwin; Turner Halsey; William L. Barrell; Joseph Valentine; Cannon Mills; Chicapee Mills; J. P. Stevens; Lowenstein.

That is the list of the principal textile combinations selling houses and factors.

* * *

[3549] Q. (By Mr. Updike) Now, Mr. Milliken, to what extent, if any, do some or all of these concerns which you have spoken of offer services comparable to those by Deering, Milliken and Company as testified to in this case, offers to the mills which sell and factor through it? A. The services performed by the firms that I have mentioned earlier who are competitors of Deering, Milliken are similar in almost all instances to those services offered by Deering, Milliken to the mills, each for the mills that sell through the respective selling agents and factors.

Q. Do those services include advice with respect to tax matters where such matters are inquired into by the client or customer? [3550] A. Yes, sir.

Q. Is there any instance—or are there any instances in which the services go beyond anything that has been testified to here as being offered by Deering, Milliken and Company to the mills which sell and factor through it? A. Yes, sir.

Q. Can you give us an illustration of that, sir? A. The Aniston Manufacturing Company recently changed its selling and factoring account from Hessline and Company to Chicapee.

Trial Examiner: Hessline isn't one that you recited?

The Witness: No.

Trial Examiner: From Hessline and Company to Chicapee?

The Witness: Yes, sir.

And the Chicapee organization offered as an inducement to the Aniston Manufacturing Company the promise that they would come in and set up a system of production control; they would reorganize their cotton buying; that they would, help them to

set up a study of their work assignments, and make available to them for out-of-pocket costs only a man who would come in and make a study of their machinery layout.

Q. (By Mr. Updike) Now, these mills—let's take Cannon Mills as an example——

Trial Examiner: I am wondering—excuse me, Mr. Updike—but are these so-called independent factors? Are [3551] they single——

Mr. Updike: I was going to ask that, sir.

Trial Examiner: Excuse me.

Q. (By Mr. Updike) Let's take Cannon Mills for an example. Does Cannon Mills sell and factor for mills which either have an interest in it or in which it has an interest? A. It is my understanding, Mr. Updike, that there are two companies. There is Cannon Mills, which is listed on the New York Stock Exchange. It in turn has, as I understand it, a wholly-owned subsidiary which is called Cannon Mills of New York, a New York Corporation, which sells all of the products as far as I know of the Cannon Mills as such.

This subsidiary engages in the business of selling and factoring for additional mills in which the Cannon parent organization has no financial interest. Such mills as the Alice, and Aerial Manufacturing Company owned by the McKinniks in Greenville, the Clifton—or rather the Inman and Enoree Mills in Spartanburg owned by the Chapmans.

And in a similar fashion, J. P. Stevens and Company sells for mills such as the Marion Manufacturing Company, the Jackson Mills, and I believe—and the Thomaston Cotton Mills in which it has no financial interest.

Q. All right. Does J. P. Stevens have a selling and [3552] factoring subsidiary such as Cannon has? A. I believe that it is not a subsidiary, but it does have in addition to its own factoring a division, a wholly-owned factoring subsidiary called J. P. Maguire and Company which factors for some of the mills which sell through Stevens and for a large number of mills who have no selling arrangements with J. P. Stevens.

* * *

[3556] Q. (By Mr. Updike) Mr. Milliken, Mr. Buchanan has inquired, as I understand it, in effect whether the services rendered by a selling and factoring agent to mills in which it has an interest are different from, greater than, or less than those services rendered for mills in which it has no financial interest? A. It is my knowledge from my contacts, for instance, with the partners of Islin-Jefferson and Company, whom I know well, that services that they perform for the Woodside Mill; for instance, in which they have a very large interest, and those which they perform for the Borden Mills and the Bibb Manufacturing Company in which they have no interest, are to all intents and purposes identical.

Mr. Updike: Does that answer the point that you brought up sir?

Trial Examiner: I think so.

Q. (By Mr. Updike) Now, Mr. Milliken, can you tell us what the practice is with respect to the name, so to speak, applied to mills in the parlance of the textile business in [3557] New York?

In other words, I think Mr. Minot Milliken testified that the Cannon Mills, meaning the selling agency, in the representation, I think, you said earlier—I think you referred to

the Inman Mills; in the parlance of the business in New York, the Inman Mill is known as a Cannon Mill.

Is that right?

Or does your recollection differ from his? A. That is correct, Mr. Updike. And I used to be very much puzzled when I would be talking about a sales problem with Mr. Harris or Mr. May and finding out to whom Deering, Milliken had lost an order for one of their clients, to have them tell me that they lost an order on a print cloth fabric to Cannon Mills.

And I said to them but Cannon has no print cloth mills, referring to Cannon Mills, the Towel and Sheet producer.

And they said, well, I don't dare, the customer told us we lost it to Cannon Mills. And it was sometime before I became aware of the fact that it was common in the trade to refer to the Inman Mills that makes print cloth and the Alice Mills that make print cloth, who sold through Cannon as Cannon Mills.

And they are commonly referred to as such in the trade papers when they report on what mills are doing as [3558] regards raising or lowering of prices or changing constructions, et cetera.

And in the same fashion, those mills which have engaged the services of Islin-Jefferson for selling and factoring are referred to as "I. J. Mills", et cetera.

Q. Then there are some Lowenstein Mills, for example, or Woodward-Baldwin Mills? A. Yes, sir, there are.

Q. You have been here a good many days Mr. Milliken. And we have heard references from many of the exhibits to the D. M. Mills, to "our organization", to "this organization," "the Deering, Milliken Mills", and where there is

a communication within the group, if we may call it that for the moment, comprised of Deering, Milliken and Company, Incorporated and the mills that sell through it and the Service Corporation and the Research Corporation, has there been a practice to refer at times to those companies as the Deering, Milliken Mills, or a reference equivalent to that?

Mr. Janes: Practiced where?

Mr. Updike: Within the organization, so to speak.

I did that on purpose. We have all, as a matter of fact—if there is anything that has been demonstrated in these hearings, it is whether it is admittedly a matter of economy or not—everyone has dissented or assented, whichever may be regarded, to the use of "D. M. Mills."

[3559] Trial Examiner: I might say that I noted—or I was struck with the fact that several witnesses appeared to me to be very careful to say "mills selling through Deering, Milliken".

Mr. Janes: At the hearing.

Trial Examiner: At the hearing, that is right.

So that it appears that—I think General Counsel and Mr. Janes won't object to this statement—they will claim that it proves or tends to prove their position. Mr. Updike is in the process of offering an explanation for this. But it appears that these various mills which for present purposes we will say are mills selling through Deering, Milliken and Company, are generally referred to as "Deering, Milliken Mills."

Does anybody dissent?

(No response)

Trial Examiner: All right.

Mr. Updike: They are so referred to in the shorthand of trade parlance in New York.

Mr. Janes: Are you talking about trade parlance or in your organization, if I may use that word? That is the reason I asked the question; to make it clear what the witness is talking about—trade parlance or——

Mr. Updike: I am just about to draw that distinction, if I may, Mr. Janes.

[3560] Mr. Janes: Surely.

Q. (By Mr. Updike) We have been talking in terms of trade parlance for the last several questions. The trade parlance with respect to Cannon Mills and Chicapee and "IJ" Mills, and so on.

Was that true so far as you are aware, Mr. Milliken, with respect to Deering, Milliken itself? That is to say, the mills were frequently referred to as "DM" Mills? A. Yes, sir.

Q. Now, sir, in this connection are there other areas within the textile industry where a similar or analogous situation exists such as the AMC Stores? A. Yes, sir.

Q. What are the AMC Stores? A. There is no such corporate entity as the AMC stores, Mr. Updike; but a group of independent stores or store chains, in the interest of buying economies, banded together and formed a subsidiary corporation, which became—which is known as the Associated Merchandising Corporation. I believe there are one or two other similar corporations. They formed AMC Associates to make group purchases of certain materials. These stores are by and large the leading stores in their communities through the United States. And when, for instance, a mill that sells through Deering, Milliken comes

up with a new development, a new fabric— [3561] milium, v-s-s-a, lorette, something like that—the first interest that we have in Deering, Milliken is to get the AMC Stores interested in buying it. So we call on the AMC buying offices. And often we have been fortunate in getting the AMC stores to put on an AMC promotion.

We have in instances been able to sell them merchandise packaged as an AMC Diaper with that name on it. This, you understand, would be sold by stores that are completely independent of each other, and only work together because working alone they could not afford the services of the same caliber that they can obtain by pooling their efforts and working together.

Q. Are there any other analogies that you think of? A. As I have thought about it, I think that another analogy might be CBS Television Stations. It is my understanding that only seven stations are owned by the Columbia Broadcasting Company; but there are perhaps fifty others, the owner of which lives next door to me in Spartanburg that are completely independent financially, but who constantly refers to his CBS affiliation, and meets with other so-called CBS affiliates at meetings similar to treasurer's meetings that have been described here for the purposes of discussing common problems and exchanging individual experiences.

Maybe the Howard Johnson Restaurant Chain would be comparable, where it is my understanding Howard Johnson does [3562] not own an interest in any of the filling stations and/or motels that sell under that name, but where they use that name because it helps to advertise their product and get them customers.

* * *

Q. Indeed I think it appears from stipulation here that the stock of Darlington, the stock of Gaffney, the stock of Monarch, and perhaps others, and Drayton, publicly quoted,

sold, and traded in day by day. A. I knew of three weekly stock quotation sheets that came across my desk which quoted the bid and ask price on [3563] Darlington Manufacturing Company stock.

Q. Now, in connection with the formal or legal relations of Darlington, what was the practice with respect to the use of its correct corporate designation? A. Mr. Updike, I would feel that in almost every, if not every, transaction of a business nature that Darlington made, that this transaction was taken in its corporate position under its corporate name. I think that undoubtedly every letter that was ever written by Mr. Oeland or any person reporting to him working for the Darlington Manufacturing Company was written under the Darlington letterhead, using the corporate name and the place of business.

I believe that all of the checks that were made out to any individual working for Darlington were made out on a Darlington Manufacturing Company check.

This would also be true for any supplies, machinery that they purchased. I am sure that any bills that they submitted for waste or for junk or for house rental and other things would have been on their letterhead. Any communications they had with their banking accounts would be done completely on their corporate name.

Q. What about the corporate resolutions in connection with bank accounts? A. Of course it is a requirement I think of the banking laws of all states that before a bank can honor a signature [3564] drawn on the account of a corporate entity, it has to have a resolution officially passed by the Board of Directors of that Institution.

Q. I show you what I believe to be the form of the cotton sales note, and I ask you if that is the document under the terms of which sales by Darlington or on behalf of

Darlington were recorded? A. Yes, sir, it is. And you will note that while it goes out under the heading "Deering, Milliken and Company, Inc.," it states that it is "acting as agent for the," at the top of the page in the upper right-hand corner, and that at the bottom where a signature of somebody in the Deering, Milliken and Company is called for, "it is accepted by Deering, Milliken and Company, Incorporated, specifically designated as a selling agent."

And it is because of these separate corporate entities that it was with chagrin the other day that I noticed on a letter that Mr. Dyer cross-examined me about that I referred, for instance, to the whole company, when in fact there is no whole company. But here Darlington Manufacturing Company, a separate entity selling through Deering, Milliken and Company, an agent.

And this same letter I think I referred to the manufacturing of Deering, Milliken. Deering, Milliken has never ever had any manufacturing division nor has it ever [3565] entered into manufacturing. This I believe was a short cut and convenient way of describing the manufacturing carried on by the mills who had hired as their selling agent Deering, Milliken and Company, a very cumbersome phrase indeed, to use in a letter to somebody who clearly knew and did know the facts of the separate Corporate Entities involved.

* * *

[3566] Q. Now in one portion of this ["Fabric Magic"] book, reference is made—and these pages are not numbered—but I would say it is about three-quarters of the way through toward the end, on a page the top line of which reads "Magic of Mill Integration": there is the phrase: "So is the textile team with Milliken a group of specialist mills, each expert in some type of phase of textile production and closely integrated to control from start to finish the properties, costs and quality of the fabrics."

And I ask you, sir, if the term "integrated" on that page has a special reference to the particular message that is there set forth?

Mr. Janes: I object to that on the ground that the exhibit speaks for itself.

Trial Examiner: I will let the witness explain.

The Witness: Mr. Updike, at this dinner meeting at the Waldorf Astoria, the selling organization of Deering, Milliken was talking about the sale of a finished product, namely Lorette, made by one of the woolen mills that hired Deering, Milliken to sell for it. It refers in this fabric magic booklet primarily and principally to fabrics sold by Deering, [3567] Milliken in the finished state. And we in Deering, Milliken and Company were calling the attention of our customers to the fact that these fabrics that we were talking about were made by a mill that bought the raw wool and finished the product as against converter type of merchandising which has been discussed earlier where, for instance, a converter would buy goods from the Darlington Manufacturing Company, have them finished for its account, and sell them, which would not be considered to be an integrated operation from cotton to finished cloth.

We were talking here about integrated fabrics where one mill had control from the raw wool to the finished cloth ready to be cut by the garment manufacturer.

Q. Now, I notice that this exhibit refers to "mills with Milliken" rather than Deering, Milliken.

What advice if any did you receive from your advertising people with respect to that? A. When Deering, Milliken and Company first started advertising in a major way, Mr. Updike, they hired Young and Rubicam to advise them in this matter.

Young and Rubicam advised that it was a very—it was a difficult enough thing to get the public to become acquainted with a single name; and that they would like to recommend that instead of Deering, Milliken, the name Milliken alone would be used as identification in advertising that they would be preparing for us. And their advice was accepted and has [3568] subsequently been followed.

Q. In advertising, Mr. Milliken? A. In advertising, yes.

* * *

Q. (By Mr. Updike) Mr. Milliken, I recall that in the testimony that you gave I believe on Tuesday, that reference was made to the proper cost in connection with the production of cotton products of labor on the one hand and overhead on the other. And I don't just recall what the exhibit was.

I don't find a quick reference to it. A. Mr. Updike, I remember this was a letter that was written by me to Mr. Oeland following a visit that I made to the West Point Manufacturing Company. And at West Point, Joe Lanier, the president said that——

Trial Examiner: Wait a minute.

Mr. Updike: It is N-59.

Trial Examiner: What was your question, Mr. Updike?

Q. (By Mr. Updike) My question is: with reference to General Counsel's N-59, which we have found, whether you have subsequently sought to verify the correctness of

those figures of 16 cents for labor on the one hand and 16 cents for overhead on the other. And if so what the verification has shown. A. May I state the background against which this question [3569] was asked, Mr. Updike?

Q. If you can do it briefly, yes. A. The President of West Point had just organized a department to make economic studies into the different areas of textile manufacturing because he had been asked by his directors where they should expand if they had money with which to expand.

He said that they had been investigation, among others, the print cloth field; that in talking to somebody he knew in the textile industry that he had been told that a price of 16 cents a pound for labor and 16 cents a pound for overhead was a good one for a print cloth mill.

He asked me if that were true. I said that I was not that familiar with the costs, but I made a mental note to find out—that I wanted to find out and inform myself on that subject. And when I got home I did write a letter to the print cloth mills with which I was connected.

You will remember that Darlington wrote that their costs were about 16 cents in each category. However, another mill with which I am connected, which is the most successful print cloth mill with which I am connected, wrote and advised that their labor costs at that time was approximately 13¾ cents and their overhead 13¼.

And 13 cents was subsequently estimated by the Witin Manufacturing Company in a study that they made which was [3570] published in May of 1956 as being that cost which a modern print cloth mill would need to have for labor to be competitive.

Mr. Updike: I have only one further point to make on a different topic, Mr. Examiner.

Trial Examiner: Very well.

Mr. Updike: At the first hearing there was testimony adduced by Mr. Dyer through a witness named Mozingo who testified to a conversation with Mr. Milliken which has repeatedly been cited since for the proposition that this witness had stated following the stockholder's meeting at which the liquidation vote was taken that as long as a hard core of 17 percent remained in Darlington. he would refuse to open the mill.

Now, this witness has repeatedly stated to me that he did not make any such statement at that time. And you will recall that I was not present when that testimony was taken, Mr. Buchanan. And in the subsequent developments with Mr. Poag, the rebuttal of that statement by the witness was not placed in the record.

I should like to place it on the record now if I may, so that we will not be in the future—so in the future we will not be in the position of not having this witness' own version of that conversation on which to rely for our side of the case.

[3571] Mr. Dyer: Mr. Examiner, I have two objections to such a course. One is a basic one in that the witness was asked by Respondent's Counsel concerning the conversation. It may not have been the most direct questions to be asked, but the witness did testify concerning his conversations with Mr. Mozingo. I do feel that the witness should not be given a second chance to correct any oversights of the first.

Secondly, I think that all parties have agreed that this hearing does not take up that particular—or that goes directly to the violation at Darlington.

And I think the point has been made by Counsel here that they were not here to try that part of it.

Mr. Updike: That is perfectly true.

Mr. Janes: Mr. Trial Examiner, without repeating anything Mr. Dyer says, I want to incorporate by reference everything he says as vigorously as I can.

Trial Examiner: The record will note your vigor, Mr. Janes.

Mr. Janes: Thank you, Mr. Trial Examiner, as long as you note it.

Trial Examiner: The record will show that Mr. Updike has sought at this time an opportunity to rebut that testimony. I am going to sustain the objection. This is a matter in which—oh, I think there is other reason; but aside from the fact generally that we won't reopen the other case—[3572] we have agreed not to go into it; and I think as a matter of fact the other day, probably Tuesday, the last time there was a reminder of that was when Mr. Janes noted a violation—or rather noted an objection and spoke of something—he mentioned remedy and violation.

And when I pointed out he had included violation, he said, I withdraw that. The objection is sustained.

Mr. Updike: Well I wish to put it on the record and I also wish to put on the record my dissent from Mr. Dyer's statement that the witness was asked directly concerning this particular conversation with Mozingo.

Trial Examiner: Well, Gentlemen, the record will show whatever did occur. And certainly if we are not going to take testimony from the witness to

supplement the original hearing, statements by Counsel will not be regarded as adding to the testimony received.

* * *

[3581] Q. (By Mr. Dyer) Mr. Milliken, in response to a question from Mr. Updike, I believe you said that Deering, Milliken did not guarantee loans for any of the mill corporations; is that right? A. That is right.

Q. Did Deering, Milliken as a matter of fact advance cash for Darlington's operations during the time Darlington was undergoing reorganization in the late 30s? A. That is before my time. It is my understanding that Darlington—that Deering, Milliken had advanced cash to Darlington that Darlington was not able to pay off.

Q. And subsequently Deering, Milliken took stock in lieu of Darlington paying? A. There was a reorganization in which Deering, Milliken was issued stock on some kind of basis for the indebtedness that Darlington had to it.

Q. All right.

Mr. Mililken, I take it that in your capacity as President of most of these corporations which is shown on the chart that you actually are the spokesman for the Milliken Family? A. Well I don't know what you mean by that. I am sure that there are members of the family that would thoroughly disagree with that.

Q. Well in most business matters do you speak for the family? [3582] A. No, sir, I do not. Each speaks for himself or herself.

Q. One further question: As I understand it, there was a teletype system in existence between Deering, Milliken, Darlington, the Service Corporation, and Research Corporation; is that right? A. Well, I undesrtand that there was teletype service which is the kind that is purchased by any-

body that wants to have teletype service. Is that not—I am not familiar with how it works frankly.

Q. Well what I was asking—— A. There was a teletype in New York in the office of Deering, Milliken and Company—and I believe there was one in Darlington, I am not sure.

But there certainly are in some of the mills. And teletype communications went back and forth between them.

* * *

[3585] Mr. Schoemer: Mr. Examiner, you will recall that approximately a week ago today we furnished to Counsel for the Union at his request copies of the employees handbook issued by Monarch, Judson and Drayton Mills; in addition to the book which has been marked in evidence as Respondent's Exhibit N-1.

To avoid putting these three books in evidence in that they together comprise some 125 or 150 pages, we would ask Counsel for—we would ask the General Counsel and Counsel for the charging union to concede that based upon their examination of the books, first of all, each book contains an organization chart in which the top position appears either as treasurer or vice president, and no reference to the [3586] president of the company is made on the organization chart.

Secondly, that the only references in the various books to Deering, Milliken and Company are as follows: At page 9 of the Judson Book the following appears:

"Our fabrics, which are sold through our selling agent, Deering, Milliken and Company, Inc., are

used by many of the well known garment and other textile fabric indicators."

Secondly, that in the Drayton book, which is entitled "Drayton and You", at page 4, the only reference to Deering, Milliken and Company is in the following terms:

"These and other Drayton fabrics are sold through our selling agents Deering, Milliken and Company, New York, and will be found in many well-known lines."

And that in the Monarch Mill's employees handbook at page 65, the following references to the name "Deering, Milliken" appear.

"Selling agents."

"Deering, Milliken and Company with sales headquarters in New York at 240 Church Street markets the output for the three plants."

And then omitting a paragraph, another heading "Cotton:

"Cotton for all plants is purchased centrally by the Deering, Milliken Cotton Purchasing Department with headquarters at the Monarch Plant——".

Mr. Janes: Excuse me for a minute, Mr. Schoemer. This [3587] may cut it short.

Now I will accept your statements and I would be willing to stipulate that they appear in those books.

At the same time, I would like to have an opportunity to cull from those booklets statements that I would like to present as our argument if they would be available to me and we could do that at another time.

Mr. Schoemer: If I may do so, Mr. Janes, I suggest first of all that you let me finish the quote which I was reading.

Mr. Janes: Surely.

Mr. Schoemer: Continuing the quote:

"—through which the cotton requirements for Deering, Milliken Mills are obtained."

If there are any statements in these books to which either counsel for the Union or for General Counsel wishes to direct your attention we of course would have no objection to their doing so.

Mr. Janes: The question is asked whether we would stipulate that these statements be put on the record in lieu of there being made exhibits. Because of the timing factor—and that is the only consideration that moves me at the present time—there are certain statements that I do want to put in. I didn't know whether the company was going to put these manuals into evidence. But I would like the same kind of [3588] privilege as Mr. Schoemer had. And, therefore, I would stipulate as to the statements that he has made provided we get a similar stipulation that the books will be made available to us and we could point out to the Trial Examiner the statements that we believe will further our argument.

* * *

INDEX

PAGE

PART I

Exhibits at 1957 Hearings

General Counsel Exhibit 1C 1241
General Counsel Exhibit 1D 1242
General Counsel Exhibit 2B 1244
General Counsel Exhibit 2C 1246
General Counsel Exhibit 2D 1247
General Counsel Exhibit 2E 1248
General Counsel Exhibit 2F 1249
General Counsel Exhibit 2G 1250
General Counsel Exhibit 2I 1252
General Counsel Exhibit 3 1254
General Counsel Exhibit 4 1255
General Counsel Exhibit No. 7 1256
General Counsel Exhibit 8 1262
General Counsel Exhibit 9 1266
General Counsel Exhibit 10 1268
General Counsel Exhibit 11 1270
General Counsel Exhibit 12 1272
General Counsel Exhibit 13 1274
Company Exhibit 1 1275
Company Exhibit 2 1276
Company Exhibit 4 1277
Company Exhibit 5 1280
Company Exhibit 7 1281
Company Exhibit 8 1282
Company Exhibit 10 1283
Company Exhibit 11A 1286
Company Exhibit 11B 1287
Company Exhibit 13 1288
Union Exhibit 1 1290
Union Exhibit 2 1292
Union Exhibit No. 4 1301
Union Exhibit 5 1302

PAGE

PART II

Exhibits at 1958 Hearings

General Counsel's Exhibit A-12 1308
General Counsel Exhibit B-2 1312
General Counsel Exhibit B-3 1313
General Counsel Exhibit B-5 1315
General Counsel Exhibit B-6 1317
General Counsel Exhibit B-9A 1318
General Counsel Exhibit B-9B 1319
General Counsel Exhibit B-9C 1320
General Counsel Exhibit B-9D 1321
General Counsel Exhibit B-10 1322
General Counsel Exhibit B-11 1323
General Counsel Exhibit B-12 1325
General Counsel's Exhibit B-13 1326
General Counsel Exhibit B-17 1342
General Counsel Exhibit B-19 1345
General Counsel Exhibit B-20 1346
General Counsel Exhibit 21 1348
General Counsel Exhibit B-22 1349
General Counsel Exhibit B-25 1351
General Counsel Exhibit B-26 1354
General Counsel Exhibit B-27 1355
General Counsel Exhibit B-28 1356
General Counsel Exhibit C-1 1360
General Counsel Exhibit C-5 1361
General Counsel Exhibit C-6 1363
General Counsel Exhibit C-7 1365
General Counsel Exhibit C-9 1366
General Counsel Exhibit C-12 1367
General Counsel Exhibit C-13 1368
General Counsel Exhibit C-14 1369
General Counsel Exhibit C-15 1370
General Counsel Exhibit C-16 1372
General Counsel Exhibit C-17 1375
General Counsel Exhibit C-18 1376
Respondent Exhibit C-1 1377
General Counsel Exhibit D-3 1379
General Counsel Exhibit D-4 1381

PAGE

General Counsel Exhibit D-5 1382
General Counsel's Exhibit D-9 1384
General Counsel Exhibit D-10 1385
General Counsel Exhibit D-12 1387
General Counsel Exhibit D-13 1388
General Counsel Exhibit D-14 1389
General Counsel Exhibit D-15 1390
General Counsel Exhibit D-16 1391
General Counsel Exhibit D-17 1392
General Counsel Exhibit D-18 1393
General Counsel Exhibit D-19 1394
General Counsel Exhibit D-20 1395
General Counsel Exhibit D-21 1396
General Counsel Exhibit D-23 1397
General Counsel Exhibit D-25 1398
General Counsel Exhibit D-26 1399
General Counsel Exhibit D-28 1400
General Counsel Exhibit D-29 1401
General Counsel's Exhibit D-30 1402
General Counsel Exhibit D-32 1404
General Counsel Exhibit D-33 1406
General Counsel's Exhibit E-2 1409
General Counsel Exhibit E-3 1410
General Counsel Exhibit E-4 1412
General Counsel Exhibit E-5 1418
General Counsel Exhibit E-6 1419
General Counsel Exhibit E-7 1425
General Counsel Exhibit E-8 1426
General Counsel Exhibit F-3 1430
General Counsel Exhibit F-4 1431
General Counsel Exhibit F-5 1433
General Counsel Exhibit F-6 1434
General Counsel Exhibit F-10 1435
General Counsel Exhibit F-12 1437
General Counsel Exhibit F-15 1439
General Counsel Exhibit F-16 1441
General Counsel Exhibit F-17 1442
General Counsel Exhibit F-18 1444
General Counsel Exhibit F-20 1445
General Counsel Exhibit F-21 1447

	PAGE
General Counsel Exhibit F-22	1449
General Counsel Exhibit F-23	1450
General Counsel Exhibit F-24	1452
General Counsel Exhibit F-25	1454
General Counsel Exhibit F-26	1455
General Counsel Exhibit F-27	1456
General Counsel Exhibit F-28	1457
General Counsel Exhibit F-29	1463
General Counsel Exhibit F-30	1465
General Counsel Exhibit F-31	1466
General Counsel Exhibit F-32	1468
General Counsel Exhibit F-33	1473
Respondent's Exhibit F-1	1476
General Counsel Exhibit G 1	1479
General Counsel Exhibit G-2	1480
General Counsel Exhibit G-4	1481
General Counsel Exhibit G-5	1482
General Counsel Exhibit G-6	1483
General Counsel Exhibit G-7	1484
General Counsel Exhibit G-8	1487
General Counsel Exhibit G-9	1489
General Counsel Exhibit G-10	1491
General Counsel Exhibit G-11	1493
General Counsel Exhibit G-13	1495
General Counsel Exhibit G-14	1497
General Counsel Exhibit G-15	1498
General Counsel Exhibit G-16	1501
General Counsel Exhibit G-19	1502
General Counsel Exhibit G-20	1503
Respondents' Exhibit G-3	1505
General Counsel Exhibit H-1	1507
General Counsel Exhibit H-2	1508
Respondent's Exhibit H-3	1509
General Counsel Exhibit H-4	1510
General Counsel Exhibit H-7	1511
General Counsel Exhibit I-2	1512
General Counsel Exhibit I-3	1514
General Counsel Exhibit J-1	1516
General Counsel Exhibit J-2	1518
General Counsel Exhibit J-3	1520
General Counsel Exhibit J-4	1521

PAGE

General Counsel Exhibit J-5 1522
General Counsel Exhibit J-6 1523
General Counsel Exhibit J-7 1527
General Counsel Exhibit J-8 1528
General Counsel Exhibit J-9 1530
General Counsel Exhibit J-10 1532
General Counsel Exhibit J-11 1534
General Counsel Exhibit J-12 1536
General Counsel Exhibit J-13 1538
General Counsel Exhibit J-14 1540
General Counsel Exhibit J-15 1543
General Counsel Exhibit J-16 1547
General Counsel Exhibit J-19 1551
General Counsel Exhibit 20 1553
General Counsel Exhibit J-21 1554
General Counsel Exhibit J-22 1556
General Counsel Exhibit J-23 1559
General Counsel Exhibit J-24 1560
General Counsel Exhibit J-25 1562
General Counsel Exhibit J-26 1563
General Counsel Exhibit K-1 1567
General Counsel Exhibit K-2 1569
General Counsel Exhibit L-1 1570
General Counsel Exhibit L-3 1571
General Counsel Exhibit L-4 1573
General Counsel Exhibit L-5 1575
General Counsel Exhibit L-6 1580
General Counsel Exhibit L-7 1582
General Counsel Exhibit L-8 1585
General Counsel Exhibit L-9 1590
General Counsel Exhibit L-10 1592
General Counsel Exhibit L-12 1596
General Counsel Exhibit L-13 1598
General Counsel Exhibit L-14 1599
General Counsel Exhibit L-15 1601
General Counsel Exhibit L-16 1602
General Counsel Exhibit L-17 1604
General Counsel Exhibit L-20 1606
General Counsel Exhibit L-22 1607
General Counsel Exhibit L-24 1609

	PAGE
General Counsel Exhibit M-1	1610
General Counsel Exhibit M-2	1612
General Counsel Exhibit M-3	1613
General Counsel Exhibit M-4	1615
General Counsel Exhibit M-5	1617
General Counsel Exhibit M-6	1621
General Counsel Exhibit M-8	1622
General Counsel Exhibit M-9	1624
General Counsel Exhibit M-10	1625
General Counsel Exhibit M-11	1633
General Counsel Exhibit M-12	1638
General Counsel Exhibit M-14	1645
General Counsel Exhibit M-15	1646
General Counsel Exhibit M-16	1647
General Counsel Exhibit M-17	1648
General Counsel Exhibit M 18	1651
General Counsel Exhibit M-19	1655
General Counsel Exhibit M-21	1656
General Counsel Exhibit M-22	1662
General Counsel Exhibit M-23	1664
General Counsel Exhibit M-24	1665
General Counsel Exhiibt M-25	1666
General Counsel Exhibit M-26	1667
General Counsel Exhibit M-27	1668
General Counsel Exhibit M-28	1669
General Counsel Exhibit M-30	1670
General Counsel Exhibit M-31	1671
General Counsel Exhibit M-33	1672
General Counsel Exhibit M-34	1674
Respondents' Exhibit M-2	1676
General Counsel Exhibit N-1	1677
General Counsel Exhibit N-3	1678
General Counsel Exhibit 5	1679
General Counsel Exhibit 6	1681
General Counsel Exhibit 7	1682
General Counsel Exhibit 8	1683
General Counsel Exhibit N-9	1685
General Counsel Exhibit N-10	1686
General Counsel Exhibit N-11	1687
General Counsel Exhibit 13	1688

	PAGE
General Counsel Exhibit 14	1690
General Counsel Exhibit 15	1691
General Counsel Exhibit N-16	1692
General Counsel Exhibit N-17	1694
General Counsel Exhibit N-18	1700
General Counsel Exhibit 19	1702
General Counsel Exhibit 20	1703
General Counsel Exhibit N-21	1704
General Counsel Exhibit N-22	1706
General Counsel Exhibit N-23	1708
General Counsel Exhibit N-24	1709
General Counsel Exhibit N-25	1711
General Counsel Exhibit N-26	1714
General Counsel Exhibit 27	1715
General Counsel Exhibit N-28	1716
General Counsel Exhibit N-29	1718
General Counsel Exhibit N-30	1719
General Counsel Exhibit N-30	1720
General Counsel Exhibit N-31	1721
General Counsel Exhibit N-32	1722
General Counsel Exhibit N-33	1723
General Counsel Exhibit N-34	1724
General Counsel Exhibit N-35	1726
General Counsel Exhibit N-36	1728
General Counsel Exhibit N-38	1729
General Counsel Exhibit N-39	1730
General Counsel Exhibit N-40	1732
General Counsel Exhibit N-42	1734
General Counsel Exhibit N-43	1735
General Counsel Exhibit N-44	1736
General Counsel Exhibit N-45	1738
General Counsel Exhibit N-46	1740
General Counsel Exhibit 47	1741
General Counsel Exhibit N-49	1742
General Counsel Exhibit N-50	1744
General Counsel Exhibit N-51	1745
General Counsel Exhibit N-52	1746
General Counsel Exhibit N-53	1748
General Counsel Exhibit N-54	1754
General Counsel Exhibit N-55	1755

	PAGE
General Counsel Exhibit N-56	1756
General Counsel Exhibit N-57	1757
General Counsel Exhibit N-58	1758
General Counsel Exhibit N-59	1759
General Counsel Exhibit N-60	1760
General Counsel Exhibit N-61	1761
General Counsel Exhibit N-62	1765
General Counsel Exhibit N-63	1767
General Counsel Exhibit N-64	1769
General Counsel Exhibit N-65	1770
General Counsel Exhibit N-67	1772
General Counsel Exhibit N-68	1773
General Counsel Exhibit N-69	1775
General Counsel Exhibit N-70	1778
General Counsel Exhibit N-71	1782
General Counsel Exhibit N-72	1784
General Counsel Exhibit N-73	1787
General Counsel Exhibit N-74	1791
General Counsel Exhibit N-75	1794
General Counsel Exhibit N-77	1797
Respondents' Exhibit N-3	1812
General Counsel Exhibit O-1	1815
General Counsel Exhibit O-2	1816
General Counsel Exhibit O-3	1817
General Counsel Exhibit O-4	1821
General Counsel Exhibit O-5	1822
General Counsel Exhibit O-6	1824
General Counsel Exhibit O-7	1829
General Counsel Exhibit O-8	1836
General Counsel Exhibit O-9	1840
General Counsel Exhibit O-10	1843
General Counsel Exhibit O-11	1857
General Counsel Exhibit O-12	1860
General Counsel Exhibit O-14	1861
General Counsel Exhibit O-15	1862
General Counsel Exhibit O-20A	1864
General Counsel Exhibit O-20B	1865
Respondents' Exhibit O-1	1866

PAGE

PART III

Exhibits at 1962 Hearing

General Counsel Exhibit R-19 1870
General Counsel Exhibit R-21 1871
General Counsel Exhibit R-24 1872
General Counsel Exhibit R-25 1874
General Counsel Exhibit R-26 1877
General Counsel Exhibit R-27 1879
General Counsel Exhibit R-29 1883
General Counsel Exhibit R-30 1884

Exhibits at 1957 Hearings
General Counsel Exhibit 1C
PART I

Form NLRB-501
(9-53)

(CHARGE TO NLRB)
Form approved.
Budget Bureau No. 64-R0018.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FIRST AMENDED

CHARGE AGAINST EMPLOYER

Whenever a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 11-CA-1071

Date Filed 10-16-56

Amend: 11-1-56

Compliance Status Checked By: MD

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

Name of Employer: Darlington Manufacturing Company, Roger Milliken, President and Deering-Milliken & Company, Inc.

Number of Workers Employed: Approx 525

Address of Establishment (Street and number, city, zone, and State): Darlington, South Carolina, and 240 Church Street, New York City, New York

Type of Establishment (Factory, mine, wholesaler, etc.): Textile plant

Identify principal product or service: Textile products

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) and (5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about October 16, 1956, and thereafter, the employer laid off or terminated its employees, and continues to do so; these lay-offs or terminations constitute discrimination in regard to hire and tenure of employment, and terms and conditions of employment in order to discourage membership in the undersigned labor organization.

On or about October 25, 1956, and thereafter, the employer, by threatening to close, preparing to close, and closing its Darlington, South Carolina plant, and other acts and conduct, has refused to bargain with the undersigned labor organization, which is the duly designated representative of its employees.

By these and other acts and conduct, the employer has interfered with, restrained and coerced its employees in violation of their rights as guaranteed in Section 7 of the Act as amended.

(1) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.
(List subsections)

2. Basis of the Charge (Be specific as to facts, names, addresses, places involved, dates, places, etc.)

On or about October 16, 1956, and thereafter, the employer laid off or terminated its employees, and continues to do so; these lay-offs or terminations constitute discrimination in regard to hire and tenure of employment, and terms and conditions of employment in order to discourage membership in the undersigned labor organization.

On or about October 25, 1956, and thereafter, the employer, by threatening to close, preparing to close, and closing its Darlington, South Carolina plant, and other acts and conduct, has refused to bargain with the undersigned labor organization, which is the duly designated representative of its employees.

By these and other acts and conduct, the employer has interfered with, restrained and coerced its employees in violation of their rights as guaranteed in Section 7 of the Act as amended.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)

Textile Workers Union of America, AFL-CIO

4. Address (Street and number, city, zone, and State) | Telephone No.

110 W. Sixth Street, Charlotte 2, North Carolina | Fr 6-7571

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

American Federation of Labor and Congress of Industrial Organizations

6. Address of National or International, if any (Street and number, city, zone, and State) | Telephone No.

Washington, D.C.

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Bruce E. Davis
(Signature of representative or person filing charge)

10/31/56 (Date) Int'l Representative (Title, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 80)

U. S. GOVERNMENT PRINTING OFFICE 16—87600-6

Form NLRB-877
(7-49)

(CHARGE: NLRB)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of

DARLINGTON MANUFACTURING COMPANY,
ROGER MILLIKEN, PRESIDENT AND
DEERING-MILLIKEN & COMPANY, INC.

and

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO

Case No. 11-CA-1071

AFFIDAVIT OF SERVICE OF Letters enclosing copies of Amended Charge.

DATE OF MAILING November 1, 1956

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Darlington Manufacturing Company
Roger Milliken, President
Darlington, South Carolina

Darlington Manufacturing Company
Roger Milliken, President
[illegible] Church Street
New York City, New York

Deering-Milliken & Company, Inc.
240 Church Street

AFFIDAVIT OF SERVICE OF Letters enclosing copies of Amended Charge.

DATE OF MAILING November 1, 1956

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Darlington Manufacturing Company
Roger Milliken, President
Darlington, South Carolina

Darlington Manufacturing Company
Roger Milliken, President
240 Church Street
New York City, New York

Doering-Milliken & Company, Inc.
240 Church Street
New York City, New York

Subscribed and sworn to before me

this 1st day of November, 1956

Designated Agent.

NATIONAL LABOR RELATIONS BOARD

GPO 912

General Counsel Exhibit 1D

1242

AM. CHG. 11-CA-1071 DARLINGTON MFG. CO. 11-1-56 RJW

DELIVERING EMPLOYEE ☐ Deliver ONLY to addressee. (Does not apply to Certified mail.)

NEW YORK, N.Y.

☐ Show address where delivered.

Received from the Postmaster the Registered, Certified, or Insured Article, the number of which appears on the face of this return receipt.

1. Deering Milliken & Co. Inc
(Signature or name of addressee)

2. [illegible]
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of Delivery 11-7-56, 19

CHG. 11-CA-1071 DARLINGTON MFG. CO. 11-1-56 RJW

DELIVERING EMPLOYEE ☐ Deliver ONLY to addressee. (Does not apply to Certified mail.)

DARLINGTON, S.C.

☐ Show address where delivered.

Received from the Postmaster the Registered, Certified, or Insured Article, the number of which appears on the face of this return receipt.

1. Darlington Mfg. Co. & J Co
(Signature or name of addressee)

2. [illegible]
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of Delivery NOV 2- 1956, 19

AM. CHG. 11-CA-1071 DEERING-MILLIKEN & CO., INC. RJW 11-1-56

DELIVERING EMPLOYEE ☐ Deliver ONLY to addressee. (Does not apply to Certified mail.)

☐ Show address where delivered.

Received from the Postmaster the Registered, Certified, or Insured Article, the number of which appears on the face of this return receipt.

Article, the number of which appears on the face of this return receipt.

1. Deering Milliken & Co. Inc
(Signature or name of addressee)

2. [illegible]
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of Delivery 11-7-56, 19

CHG. 11-CA-1071 DARLINGTON MFG. CO. 11-1-56 RJW

DELIVERING EMPLOYEE ☐ Deliver ONLY to addressee. (Does not apply to Certified mail.)
DARLINGTON, S.C.
☐ Show address where delivered.

Received from the Postmaster the Registered, Certified, or Insured Article, the number of which appears on the face of this return receipt.

1. Darlington Mfg Co
(Signature or name of addressee)

2. [illegible]
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of Delivery NOV 2 - 1956, 19

AM. CHG. 11-CA-1071 DEERING-MILLIKEN & CO., INC. RJW
11-1-56

DELIVERING EMPLOYEE ☐ Deliver ONLY to addressee. (Does not apply to Certified mail.)
☐ Show address where delivered.

Received from the Postmaster the Registered, Certified, or Insured Article, the number of which appears on the face of this return receipt.

1. [illegible]
(Signature or name of addressee)

2. [illegible]
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of Delivery ____, 19____

General Counsel Exhibit 2B

October 25, 1956

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. J. W. Oeland, Plant Manager
Darlington Manufacturing Company
Darlington, South Carolina

Dear Sir:

The following telegram has been sent to you today for the purpose of arranging immediate collective bargaining conferences between the Darlington Manufacturing Company and the Textile Workers Union of America, AFL-CIO.

"We have just been notified that the National Labor Relations Board yesterday officially certified the Textile Workers Union of America (AFL-CIO) as exclusive bargaining agency for Darlington Manufacturing employees. In accordance with the Labor-Management Relations Act, I hereby request a conference between you and the representatives of the Textile Workers Union for purposes of collective bargaining in a spirit of good faith as required by law. We are prepared to meet with you for negotiations at once in order to cooperate in maintaining operations of the mill and preserving jobs of Darlington workers. In view of the urgency of these problems, I propose negotiating conference be held no later than Monday, October 29, or Tuesday, October 30, at any time, place and hour you find most convenient. An immediate reply is requested."

General Counsel Exhibit 2B

The maintenance of the jobs of the Darlington Manufacturing Company employees is of such importance that I do hope that by the time you receive this letter you will have already set the time and place for a meeting. If you have not already done so, I trust you will act immediately with a full awareness of our mutual obligations and legal obligations.

Very truly yours,

BOYD E. PAYTON
Southern Director

BEP:hh

General Counsel Exhibit 2C

[Letterhead of]

DARLINGTON MANUFACTURING COMPANY
DARLINGTON, SOUTH CAROLINA

October 25, 1956

Mr. Boyd E. Payton
Southern Director
TWUA, AFL-CIO
110 West Sixth Street
Charlotte 2, North Carolina

Dear Mr. Payton:

I am in receipt of your telegram of October 25th.

We have not been notified by the National Labor Relations Board of the official certification of Textile Workers Union of America, AFL-CIO as exclusive bargaining agent.

I am forwarding your telegram to our attorney, Mr. J. D. Poag, of Price & Poag, as it will be necessary for us to arrange a meeting with him for any discussions. We presume that we will in due course receive official notification from the National Labor Relations Board.

We are sure that you will hear from Mr. Poag, our attorney, in due course.

Very truly yours,

J. M. OELAND
J. M. Oeland
Treasurer

jmo-m
cc: Mr. J. D. Poag

General Counsel Exhibit 2D

[Letterhead of]

LAW OFFICES
PRICE & POAG
101 Lawyers Building
Greenville, South Carolina

October 27, 1956

Mr. Boyd E. Payton
Southern Director
Textile Workers Union of America
AFL - CIO
Charlotte, North Carolina

Dear Sir:

Your telegram of October 25, addressed to J. M. Oeland, Plant Manager, Darlington Manufacturing Company, Darlington, South Carolina has been referred by Mr. Oeland to this firm as attorneys for the Company.

We received the telegram this morning and wish to promptly advise you that on yesterday we had a call from Mr. Robert J. Wall, Field Examiner requesting a meeting with him at Darlington and suggesting Wednesday October 31st. We very readily agreed to meet with Mr. Wall at Ten o'clock on that day and will be there at the appointed time. If you plan to be in Darlington on next Wednesday, we will discuss with you an arrangement for a meeting to be held as promptly as can reasonably be expected.

Very truly yours,
PRICE & POAG
By J. D. POAG
J. D. Poag

JDP/w

General Counsel Exhibit 2E

[Letterhead of]

TEXTILE WORKERS UNION OF AMERICA
AFFILIATE OF THE AFL-CIO
110 West Sixth Street
Charlotte 2, North Carolina

November 1, 1956

Mr. J. D. Poag
Price and Poag, Attorneys
101 Lawyers Building
Greenville, South Carolina

Dear Mr. Poag:

This will confirm our conversation of October 31st at the Company's office in Darlington at which time arrangements were made for a meeting for the purpose of negotiations on November 7th at 10:00 a. m. at the Company's office in Darlington, S. C.

Unless notified to the contrary, Mr. Payton will be present at the conference.

Very truly yours,

Bruce R. Davis
International Representative

cc: National Labor Relations Board
Eleventh Region
Messrs. Boyd E. Payton
Lloyd A. Gossett

General Counsel Exhibit 2F

[Letterhead of]

TEXTILE WORKERS UNION OF AMERICA
AFFILIATE OF THE AFL-CIO
110 West Sixth Street
Charlotte 2, North Carolina

November 2, 1956

Mr. J. M. Oeland, Treasurer
Darlington Manufacturing Company
Darlington, South Carolina

Dear Sir:

Will you please have available for me Wednesday, November 7th, a list of all the people who have been terminated, their job classifications, what departments they represent and date of their termination. I would appreciate it very much if you would keep me currently advised of any future terminations, furnishing the same information as requested above.

In the event you cannot have this list available by Wednesday, you may compile it and mail it to me at this office.

Thanking you, and with kind regards, I am

Sincerely yours,

Boyd E. Payton
Southern Director

cc: Mr. James D. Poag
Greenville, S. C.

General Counsel Exhibit 2G

November 26, 1956

Mr. J. M. Oeland, Treasurer
Darlington Manufacturing Company
Darlington, South Carolina

Dear Sir:

Renewing the unfulfilled request set forth in my letter of November 2, 1956, and in order to bargain intelligently and understandingly on behalf of your employees for whom we were certified on October 24, 1956 as the collective bargaining agent and to properly discharge our functions as the statutory representative of these employees, the Textile Workers Union of America does hereby request that you furnish it promptly, in writing, with the following information:

1. The names of all employees employed by you since Sept. 6, 1956, together with their ages, length of service, job classifications, job duties, and individual wage rates.

2. A list of all job classifications in existence since Sept. 6, 1956, including descriptions and the number of employees in each classification.

3. The starting rate for each job classification, the schedule of progression, if any, from the starting to the minimum rate, the guaranteed minimum rate, and a history of wage increases or decreases for each job classification over the past 5 years.

4. The names of all employees whose employment has been terminated since Sept. 6, 1956, together with the

General Counsel Exhibit 2G.

date of their termination. It is also requested that the Union be informed of the name and date of termination of each employee hereafter terminated.

At the bargaining conference which took place on November 7, 1956, the Union requested that the Company state why it is necessary to close the plant. In reply to this request, the Company's representatives asserted that one of the reasons that the plant is closing is because of adverse financial conditions. It is, therefore, requested that you furnish the Union, in writing, with full and complete financial data to support or substantiate the Company's claim.

Very truly yours,

Boyd E. Payton
Southern Director

BEP:h
bc: NLRB
Wyle
Davis

General Counsel Exhibit 21

[Letterhead of]

LAW OFFICES

PRICE & POAG
101 Lawyers Building
Greenville, South Carolina

November 30, 1956

Mr. Boyd E. Payton
Southern Director
Textile Workers Union of America
110 West Sixth Street
Charlotte 2, North Carolina

Dear Sir:

Your letter of November 26, addressed to J. M. Oeland, Treasurer, Darlington Manufacturing Company, has been properly referred to us as attorneys for the Company.

You state that certain information is requested "in order to bargain intelligently and understandingly on behalf of" the employees.

We cannot refrain from questioning the sincerity of this statement in the light of developments following our meeting on November 7th.

We met with you on that date at your request, in good faith, and you had no proposals to make. Our purpose in meeting was deliberately misrepresented and our motives impugned by your Mr. John Edelman, who was not at the meeting, but who gave out a public statement from Washington, D. C., in which he was quoted in the press as say-

General Counsel Exhibit 21

ing: that the meeting was "a purely staged event, the Company showing no intention to bargain and obviously made the move for the meeting as a plan by its lawyers to give a technical out for the Union charge the Company has refused to bargain".

Before we give you information we will have to be assured that it is for a legitimate use rather than for propaganda purposes.

Furthermore, the information requested in your letter was discussed at our meeting and you will recall that it was stated certainly by Mr. Gossett, that this information was wanted so that it could be passed on to a prospective purchaser both before and after the sale. This statement obviously negatives the idea that the information is desired for bargaining purposes.

I wish to correct the last statement in your letter. You say that "Company representatives asserted that one of the reasons that the plant is closing is because of adverse financial conditions". The assertion was made that the plant is closing for "business reasons".

Very truly yours,

PRICE & POAG

By J. D. Poag
J. D. Poag

JDP/w

cc: Mr. J. M. Oeland
Treasurer
Darlington Manufacturing Company
Darlington, South Carolina

General Counsel Exhibit 3

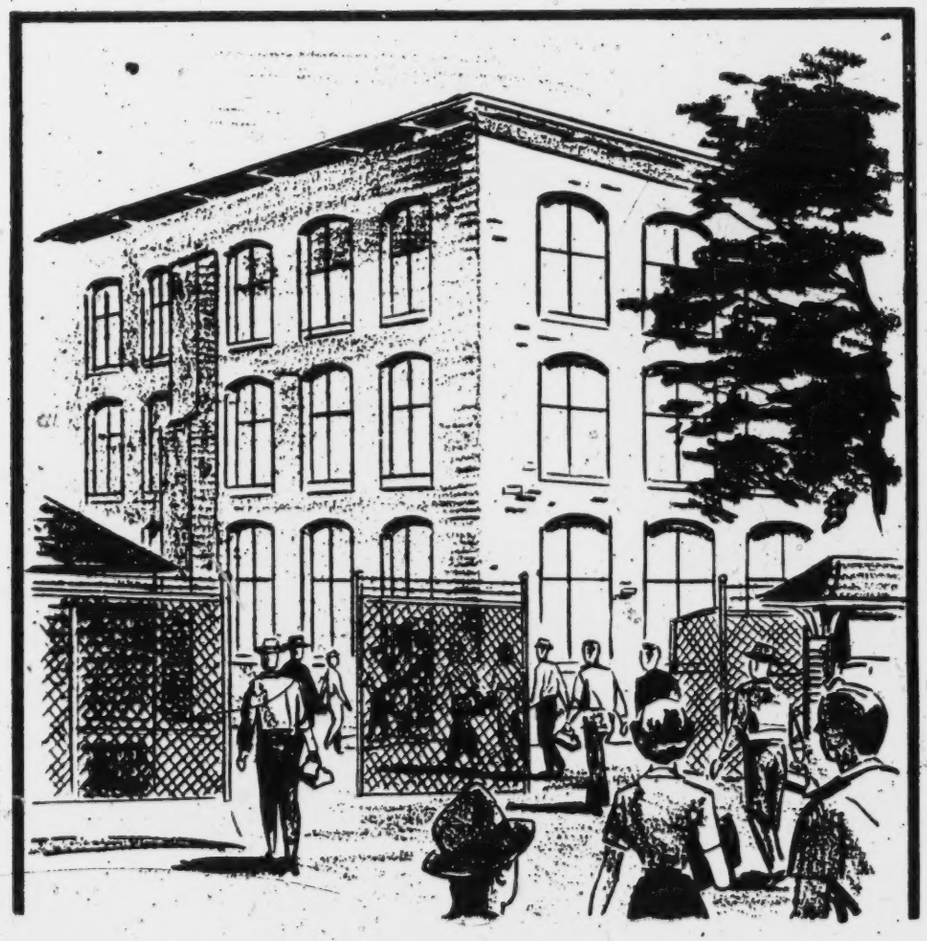
NOTICE

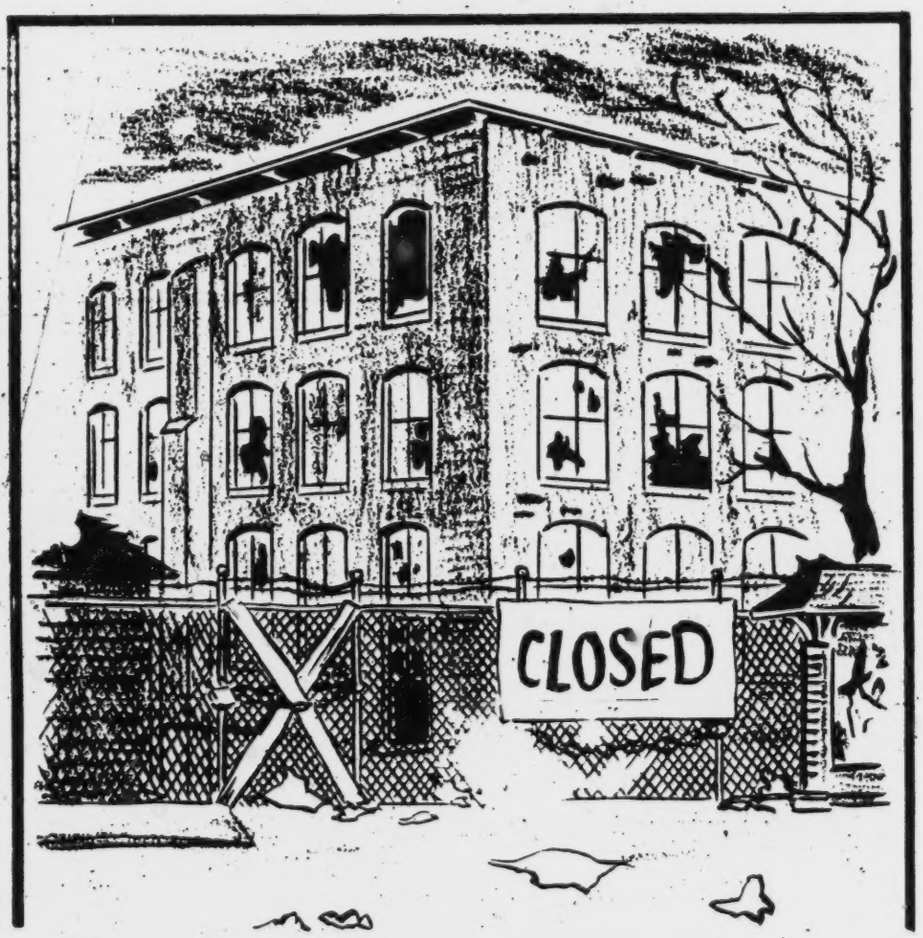
VACATION PAY UNDER THE DEERING MILLIKEN VACATION PLAN WILL BE PAID ON THURSDAY, JUNE 28, 1956.

THE MILL WILL CLOSE DOWN ON TUESDAY NIGHT JULY 3RD AT MIDNIGHT AND WILL START AGAIN ON WEDNESDAY NIGHT JULY 4TH AT MIDNIGHT.

W. A. GOODWIN
W. A. Goodwin
PRODUCTION SUPERINTENDENT

WHICH WILL YOU CHOOSE?





General Counsel Exhibit 4

The records prove that TWUA-CIO has caused many textile mills to close, ending jobs and bringing hunger and privation to people who want to work. Where that happens, only the money-hungry union dues collectors benefit–everybody else loses!

DON'T LET THREATS OF VIOLENCE OR FANCY PROMISES DESTROY <u>YOUR</u> JOB

VOTE NO!

General Counsel Exhibit No. 7

The minutes of the directors' meeting held on January 17, 1956, prior to the stockholders' meeting and following the stockholders' meeting were read and approved. These minutes were approved without correction.

The following resolution was presented:

> RESOLVED that the act of the treasurer upon approval of the directors for the payment of the regular dividend due August 31, 1956, of 15 cents per share payable to stockholders of record August 25, 1956, is hereby confirmed.

A letter signed by each director stating his approval of this action had been received by the treasurer prior to the dividend and is filed in the minute book. The above resolution was unanimously approved.

The question of the change in the pension plan was discussed. Option C was added to Section 8.03 Optional Benefits in Lieu of a Life Annuity and was unanimously approved. This option was as follows:

Option C. A participant may elect to convert the pension which he would be entitled to receive for life into a lump sum of equivalent acturial value which sum shall be segregated, held and invested by the trustee as a separate fund and the net income derived thereon following retirement shall be paid to the retired participant quarterly so long as he shall live and the principal and undistributed income, if any, held by the Trustee on the date of the death of the retired participant shall be paid to the beneficiary designated

by such participant in the manner and pursuant to the provisions of Article IX of this plan.

For further clarification of the above refer to THIRD AMENDMENTS to "The Deering, Milliken Mills Retirement Plan", which is made a part of these minutes.

Draft of Preamble and Resolutions for Adoption by Board of Directors of Deering, Milliken Mills was presented. The Chairman referred to the investment provisions of the Trust Agreement, between Deering, Milliken Mills and J. P. Morgan & Co., Incorporated, Trustee, pursuant to the Deering Milliken Mills Retirement Plan, and stated that it would be desirable to amplify such provisions with respect to the investment powers and duties of the Trustee. After discussion, on motion duly made, and unanimously carried it was

RESOLVED, that pursuant to the provisions of Section 8.1 of the Trust Agreement between Deering, Milliken Mills and J. P. Morgan & Co., Incorporated, Trustee, the board of directors of Darlington Manufacturing Company hereby orders that the provisions of Section 2.1 of said Trust Agreement be amended as follows:

1. By deleting subparagraph (a). and substituting therefor the following subparagraphs

(a) to (d) inclusive:

(a) To invest and reinvest the Trust Fund and keep the same invested, without distinction between corpus and income, in any property, real, personal or mixed, or share or part thereof, or part interest therein, wherever situate, and whether or not a productive of

income, including but not being limited to: capital, common and preferred stocks; personal, corporate and governmental obligations, secured or unsecured; mortgages, leaseholds, fees and other interests in realty; oil, gas or mineral properties, rights, royalties, payments or other interests in such property; contracts, conditional sale agreements, choses in action, trust and participation certificates, or other evidences of ownership, part ownership, interest or part interest; and in making such investments and reinvestments the Trustee shall not be restricted to those of the character authorized for fiduciaries under any present or future laws or administrative regulations or pursuant to any rule of court; nor shall the Trustee be limited as to the amount or type of any investment in relation to the amount or type of investments constituting the Trust Fund as a whole.

(b) To form a corporation or corporations under the laws of any jurisdiction for the purpose of investing in and holding title to any property.

(c) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may deem advisable from time to time and, without affecting the generality of the foregoing, the Trustee shall keep such portion of the Trust Fund in cash or cash balances as may be specified from time to time in a written request of the Committee to meet contemplated requisitions or orders of the Committee, and shall not be required to pay interest on such cash balances or on cash in its hands pending investment.

(d) To enter into stand-by agreements, either with or without a stand-by fee.

General Counsel Exhibit No. 7

2. By redesignating present paragraphs (b) to (g), inclusive as (e) to (j), inclusive.

FURTHER RESOLVED, that the officers of Darlington Manufacturing Company be and they hereby are authorized and directed to execute, acknowledge and deliver to the Trustee for signature an instrument setting forth the amendments as ordered by the foregoing resolution.

FURTHER RESOLVED, that notwithstanding any provision of said Trust Agreement as now in effect or as amended in accordance with the foregoing resolutions, the Trustee be and hereby is authorized to retain any and all investments now constituting the Trust Fund thereunder.

After discussion on the resolutions Mr. H. A. Hatch moved that the resolutions be adopted. This was seconded by Mr. Minot Milliken and approved by the Board of Directors. The following resolution was offered for adoption:

"BE IT HEREBY RESOLVED that the Board of Directors recommend to the stockholders that the Corporation go into liquidation, wind up its affairs and dissolve with all convenient speed, all in accordance with Section 12-641 et. seq. of the 1952 Code of Laws of South Carolina, and

BE IT FURTHER RESOLVED that the President shall call a special meeting of the stockholders at the earliest possible date to act upon this resolution, notice thereof being given as required by Section 12-642."

General Counsel Exhibit No. 7

After discussion a motion was seconded and the resolution was adopted by unanimous vote.

On motion made and seconded the meeting was adjourned.

Approved: /s/ J. M. Oeland
Oct. 17, 1956.

General Counsel Exhibit 8

MINUTES OF SPECIAL MEETING OF THE STOCKHOLDERS OF DARLINGTON MANUFACTURING COMPANY, DARLINGTON, SOUTH CAROLINA, HELD WEDNESDAY, OCTOBER 17, 1956.

Pursuant to notice a special meeting of the stockholders of this company was held at the office of the company in Darlington, South Carolina at 10:00 A. M. Wednesday, October 17, 1956.

The meeting was called to order by the President, Mr. Roger Milliken, who acted as chairman of the meeting. Mr. J. M. Oeland was designated as secretary and recorded the minutes of the meeting.

Messrs. J. H. Lyles and J. M. Oeland were appointed by the chairman as canvassers to ascertain the number of shares represented in person and the number of shares represented by proxy and to report on the total number of shares represented either in person or by proxy. The canvassers made their report stating that 129,328 shares were represented by proxy and 9,357 shares were represented in person. This comprised the majority of the stock, and the meeting was opened for business.

The secretary read the minutes of the annual stockholders' meeting held January 17, 1956. The minutes were approved without correction.

The secretary read the published notice of the stockholders' meeting carried in the News & Press of September 12, 1956.

This notice is recorded in the minute book.

The following resolution was read by the secretary to the stockholders:

General Counsel Exhibit 8

WHEREAS: There have been certain developments related to the continued operation of Darlington Manufacturing Company which might definitely affect the competitive position of the Company and its future operation, and

WHEREAS: These developments were of such serious import as to require a special meeting of the Board of Directors of the Corporation, which was held in Spartanburg, South Carolina, on the 12th day of September, 1956, at which time an exhaustive and careful analysis and reappraisal was made of the situation, and

WHEREAS: This investigation resulted in a recommendation by the Board to the stockholders that the Corporation liquidate and dissolve,

NOW THEREFORE BE IT RESOLVED: That Darlington Manufacturing Company shall go into liquidation, wind up its affairs and dissolve in accordance with provisions of Section 12-641, et seq., of the 1952 Code of Laws of the State of South Carolina, immediately after its present goods in process are fully manufactured, or at such time as it is determined by the officers of the corporation that such goods in process are manufactured to the extent as may be reasonably and conveniently done, and

BE IT FURTHER RESOLVED: That the Board of Directors be fully authorized and empowered to sell or cause to be sold first as a whole and then in parcels, accepting the highest price offered therefor, any or all of the physical assets and properties of the Corporation, in each instance of determination to sell particular items, at private or public auction, as they may deem ex-

pedient, and they are hereby given full power and authority to authorize the President, Roger Milliken, and/or J. M. Oeland, Treasurer, or any other of the Officers of the Corporation, to take such actions, perform such duties, to make such determinations, to execute and deliver in the name and on behalf of the Corporation, such agreements, deeds, bills of sale or other instruments as they may deem necessary or convenient to exercise and effectuate the powers and authority hereby conferred upon the Board of Directors; it being intended hereby that in all determinations to be made hereunder including without limitation of the foregoing, determinations of selling price or prices of any of the physical properties of the Corporation, the Directors and/or said President and said Treasurer, as said officers may be empowered by the Board of Directors hereunder, may determine and act as in their discretion may be deemed by them to be in the best interest of the corporation, and

BE IT FURTHER RESOLVED: That the assets of the Company shall be reduced to cash, its liabilities paid and the net proceeds of liquidation shall be distributed to the stockholders from time to time as conditions may permit and the directors may determine, provided that the final liquidating dividend shall be paid within one year from date hereof.

BE IT FURTHER RESOLVED: That upon any sale of the properties of the Corporation at public auction, no officer or director, or any corporation in which an officer or director may be interest or with which he may be connected shall be prohibited or restricted from bidding upon or purchasing any such property upon the same terms and conditions as shall apply to all bidders.

General Counsel Exhibit 8 .

BE IT FURTHER RESOLVED: That the Board of Directors be directed to report to the stockholders at their next annual meeting and make such further recommendations as they may determine upon; and present any plan or plans which they may have devised, all in respect to their acts and doings under the authorizations and powers conferred upon them at this meeting, and in respect to the future course of affairs of the Corporation.

BE IT FURTHER RESOLVED: That the Secretary forward a copy of this Resolution, signed by the President, the Secretary and a majority of the Board of Directors to the Secretary of State of South Carolina.

Upon being duly seconded, the Resolution was adopted by the vote of 134,911 shares for the adoption of the Resolution, and 3,774 shares against the adoption of the Resolution. This constituting more than a majority vote of all of the capital stock of the Corporation, the Resolution was declared "Adopted". A copy of this resolution is included in the minute book and a part of these minutes.

This resolution was discussed at length by the stockholders.

Motion for its adoption was made and seconded. The Resolution was adopted by a vote of 134,911 shares for adoption and 3,774 shares against adoption. All the shares voting against the adoption were represented by proxies.

Upon motion the meeting was adjourned.

/s/ J. M. OELAND

Approved:

General Counsel Exhibit 9

MINUTES OF DIRECTORS' MEETING OF DARLINGTON MANUFACTURING COMPANY HELD AT DARLINGTON, SOUTH CAROLINA, WEDNESDAY, OCTOBER 17, 1956, FOLLOWING THE SPECIAL MEETING OF THE STOCKHOLDERS.

The meeting of the Directors of this Company was held on October 17, 1956, at the office of the Company in Darlington, South Carolina.

A quorum was present, namely:

Mr. J. H. Lyles
Mr. Gerrish H. Milliken, Jr.
Mr. Roger Milliken
Mr. W. S. Nicholson
Mr. J. M. Oeland

Prior notice had been forwarded to the Directors as is required.

The meeting was called to order by the President, Mr. Roger Milliken. Mr. J. M. Oeland was designated to serve as secretary of the meeting.

The minutes of the directors' meeting held at Drayton Mills on September 12, 1956, were read and approved.

The official notice of the action of the stockholders was presented, as follows:

> Pursuant to the action of the stockholders, the officers were instructed to take immediate steps to arrange for the sale of the real estate, plant, buildings, machinery equipment, office furniture and fixtures, and all associated plant assets owned by the company at auction to be held on or in the vicinity of the properties to be sold on December 12th and 13th.

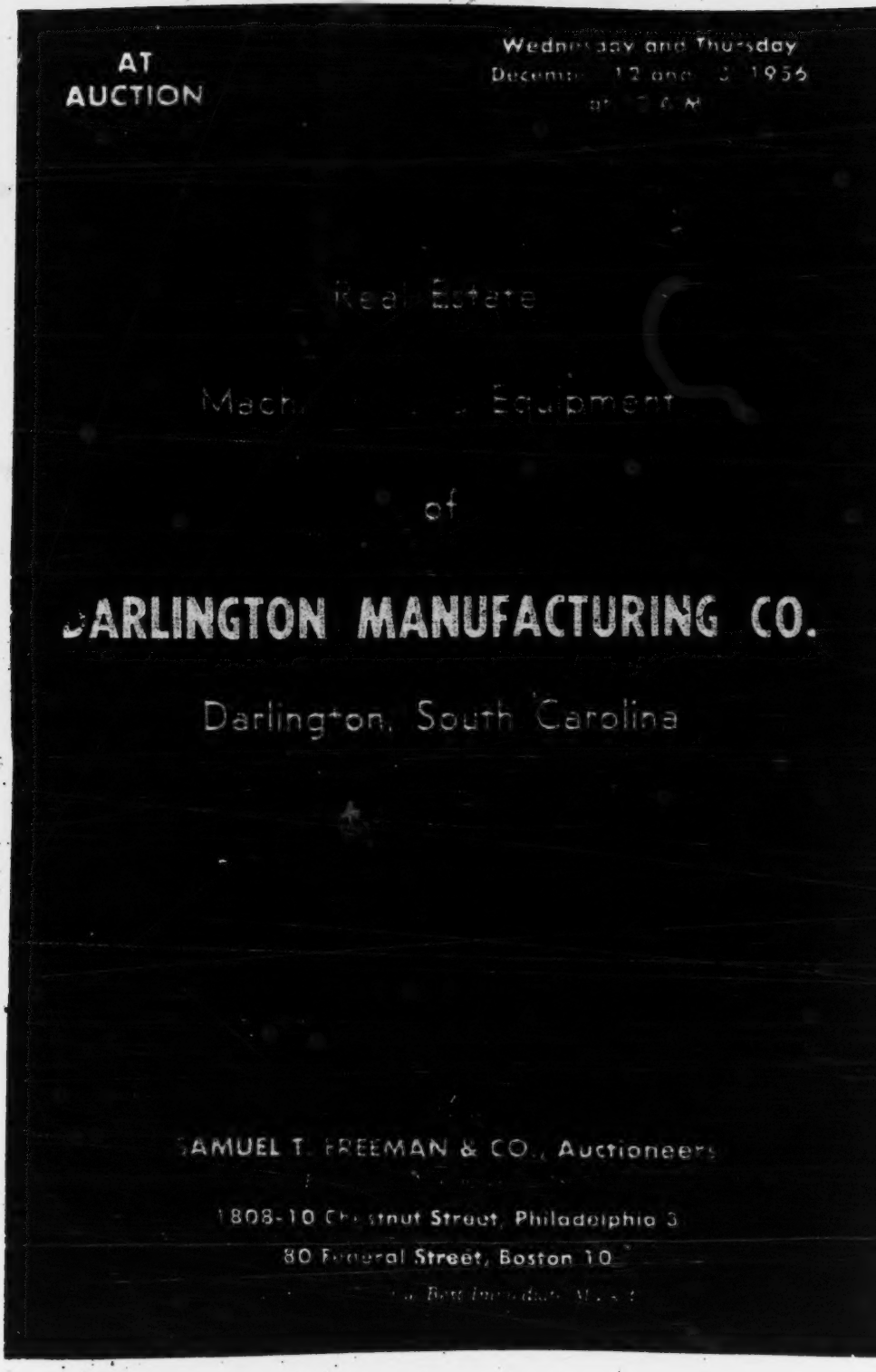
* * *

General Counsel Exhibit 9

The Treasurer requested that $6700.00 be set aside for year end bonuses for supervisors and office salaried personnel. This request was granted and approved by the Directors.

The Treasurer further requested that $500.00 be paid by the Company to Mr. T. J. Glenn for his services in connection with some personnel matters connected with the Company. This too was approved by the directors.

General Counsel Exhibit 10



General Counsel Exhibit 10

SAMUEL T. FREEMAN & CO. AUCTIONEERS - APPRAISERS

ESTABLISHED 1805

NEW ENGLAND OFFICE
50 FEDERAL ST. BOSTON 10, MASS.

1808 CHESTNUT STREET
PHILADELPHIA 3, PA.

To the Cotton Industry:

In all of my forty some odd years of auction experience in the textile field, from Maine to Texas, I have never had the pleasure of offering for sale a cotton mill as modern and up to date as the Darlington Manufacturing Company.

The modernization program which has been under way for some time shows its effect in the excellence of the machinery of every department. Throughout the mill there is evidence of outstanding maintenance and upkeep.

From the opening room right through to the laboratory it is apparent that no expense has been spared in equipping the plant with the best machinery, most up to date modifications, and meticulous care in maintenance.

I truly take pride in offering this plant for sale, and assure you purchases you make here will represent your selection from the finest cotton mill machinery on the market today.

Samuel T. Freeman & Co

Addison R. Freeman

SAMUEL T. FREEMAN & CO.
ADDISON R. FREEMAN

General Counsel Exhibit 11

NEWS RELEASE

DARLINGTON MANUFACTURING COMPANY TO BE SOLD

Darlington, S. C. October 17, 1956

The stockholders of Darlington Manufacturing Company today voted a majority of the stock in favor of the recommendation of the Board of Directors to liquidate the company.

In the interests of lessening the hardship caused to the City of Darlington by the loss of the employment furnished by the plant it was decided to offer all of the physical assets of the plant at auction at the earliest possible opportunity, namely, December 12th and 13th.

Prospective purchasers of the plant or the equipment can make arrangements for inspection of the property through Samuel T. Freeman & Company who have been engaged to conduct the auction sale.

Darlington Manufacturing Company is a well-known, up-to-date cotton mill producing carded fabrics of broadcloth, printcloths, poplins, and oxfords.

Due to an extensive modernization program in effect for the past several years, the machinery and equipment at this mill are excellent and in up-to-date condition.

The real estate comprises about 31 acres of land with a mill building containing 200,000 sq. ft. of manufacturing space and warehouses containing 50,000 sq. ft.

Major equipment at the mill consists of: Modern opening and picking equipment; 135 Saco & Pettee and Saco-

Lowell 45" cards with 15" x 42" coilers; 88 deliveries—18" gauge, 5 roll, Saco-Lowell Drawing with 15" x 42" coilers; Saco-Lowell 10 x 5 FS-2 Roving, 1948 model, and 12 x 6½ Whitin Inter-draft Roving, model 1955; approximately 45,000 spindles of Spinning including Saco-Lowell and Whitin 3" gauge Filling Spinning with new top drive spindles, Pneumafil, Superdraft, and lint-free Creels, and 3¼" gauge Saco-Lowell warp spinning with New Era Spindles, Roth drafting with Duo-Roth changeover on hand, 1938 and 1948 model frames; latest type Uxbridge Hot Air slashers; Barber-Colman "C" type spoolers and warpers; 84—new 1956, 50" x-2 Draper looms; 360—40" X-model Draper looms for 28" beams, 1934 to 1940 models, motor driven, 320—40" E-model Draper looms for 26" beams, motor driven, completely rebuilt in 1952; 193—40" E-model Draper looms, motor driven; modern cloth room equipment including Curtis & Marble stitchers, brushers, shearers and folders; up-to-date machine shop equipment, office and laboratory equipment; auxiliary equipment consisting of latest type Parks-Cramer frame cleaners and American MonoRail lap conveyor system.

General Counsel Exhibit 12

Abbeville Mills Corp., Abbeville, S. C.
Cowan Mill, Lewiston, Maine
Darlington Mfg. Co., Darlington, S. C.
Drayton Mills, Spartanburg, S. C.
Dutchess Bleachery, Wappinger Falls, N. Y.
Excelsior Mills, Clemson, S. C.
Excelsior Mills, Rutherfordton, N. C.
Excelsior Mills, Union, S. C.
Excelsior Finishing Plant, Pendleton, S. C.
Farnsworth Mill, Lisbon Center, Maine
Gaffney Mfg. Co., Gaffney, S. C.
Gayley Mill Corp., Marietta, S. C.
Gerrish Milliken Mill, Pendleton, S. C.
Hartsville Cotton Mills, Hartville, S. C.
Hatch Mill Corp., Columbus, N. C.
Johnston Mills, Inc., Johnston, S. C.
Jonesville Products Co., Jonesville, S. C.
Judson Mills, Greensville, S. C.
Kingsley Mill Corp., Thomson, Ga.
Laurens Mill, Laurens, S. C.
Lockwood-Duchess, Inc., Lockwood Division, Waterville, Maine
Lockhart Power Co., Lockhart, S. C.
McCormick Spinning Mill, Inc., McCormick, S. C.
Monarch Mills, Lockhart Plant, Lockhart, S. C.
Monarch Mills, Monarch Plant, Union, S. C.
Monarch Mills, Ottaray Plant, Union, S. C.
Pacolet Mfg. Co. No. 6, Gainesville, Ga.
Pacolet Mfg. Co. No. 4, New Holland, Ga.
Pacolet Mfg. Co. Nos. 3 and 5, Pacolet, S. C.
Union Processing Company, Gaffney, S. C.

DEERING, MILLIKEN MILLS

PURCHASING DEPARTMENT
Phone 3-3654 P. O. Box 2327
Greenville, S. C.

DATE: March 7, 1956

TO:

Brown-Rogers-Dixson Co.
P. O. Box 1597
Spartanburg, S. C.

REQUEST FOR QUOTATION No. 2576

DO NOT SHIP
OBSERVE INSTRUCTIONS

1. To receive consideration, your bid must be mailed (IN DUPLICATE) to this office at once.
2. It MUST contain: PRICE, TERMS, F.O.B. point, DATE you can DELIVER and the NUMBER of this REQUEST.
3. All substitutes offered must be clearly defined.
4. ALL correspondence, calls, or visits concerning this request MUST be directed to THIS OFFICE.
5. Caution. Please check carefully your quotations before submitting.

MILL: REG. NO.

FOR SHIPMENT TO:
Darlington, S. C.

General Counsel Exhibit 12

PLEASE QUOTE US YOUR BEST PRICE
ON THE FOLLOWING:

QUANTITY	DESCRIPTION	
1	Pressure gauge 0-150 lb. range for water service	7.64 ea

[Copy Illegible]

IF YOU DO NOT RECEIVE OUR PURCHASE ORDER WITHIN 15 DAYS PLEASE CONSIDER THIS BUSINESS PLACED ELSEWHERE

IMPORTANT: Your Bid must contain: PRICE, TERMS, F.O.B. Point, DATE you can DELIVER, and the NUMBER of this REQUEST FOR QUOTATION!

THIS IS NOT AN ORDER

General Counsel Exhibit 13

DAILY NEWS RECORD

10/3/56

Deering-Milliken
Posts Announcement

SPARTANBURG, S. C., Oct. 2.—Wage increases affecting thousands in Spartanburg County's textile industry were made known by officials today for Monday. Amounts were not disclosed.

Plants and companies telling of pay hikes were Deering, Milliken & Co., the Spartan group, Inman and Riverdale mills, and all Reeves Bros. mills.

Roger Milliken, president of Deering, Milliken, operating plants in Spartanburg, Cherokee, Union, Pickens, Greenville and Darlington Counties, said the following notice has been posted in the company's plants:

"The Administration in Washington has not yet worked out the details of a positive or permanent solution to the problem of low-cost Japanese imports competition. But in a speech last weekend, Sherman Adams, speaking for the Administration, promised that they were committed to work out a solution of this problem that would be satisfactory to the American textile industry, and would stop the liquidation of American jobs and American mills that has been taking place.

"Relying on this promise, without which a wage increase would be impossible, we hereby announce an upward revision of wages, effective Oct. 8."

Company Exhibit 1

[Letterhead of]

TEXTILE WORKERS UNION OF AMERICA
AFFILIATE OF THE AFL-CIO
110 West Sixth Street
Charlotte 2, North Carolina

August 30, 1956

TO ALL DARLINGTON WORKERS:

Greetings:

On Thursday, September 6th, the United States Government will conduct a secret ballot election in your mill to give you the opportunity of selecting a Bargaining Agency to represent you in securing HIGHER WAGES, BETTER WORKING CONDITIONS, JOB SECURITY, CONTROL OF WORKLOAD and, the freedom and independence which comes from belonging to a Union and having a voice in decisions which affect your working life.

* * *

Don't be blinded by such a "smoke-screen" which is only designed to keep you from remembering the real reasons why you need a Union to eliminate the S-T-R-E-T-C-H-O-U-T, secure higher wages and insure fair treatment in the mill.

* * *

Sincerely yours,

BOYD E. PAYTON
Boyd E. Payton
Southern Director

Company Exhibit 2

[Letterhead of]

TEXTILE WORKERS UNION OF AMERICA
AFFILIATE OF THE AFL-CIO
110 West Sixth Street
Charlotte 2, North Carolina

July 25, 1956

Dear TWUA Member:

* * *

The record proves that through TWUA, AFL-CIO, textile workers are enjoying better pay, paid vacations, paid insurance, paid holidays, seniority, and above all, a voice on workloads and grievances.

* * * *

Fraternally yours,

LLOYD A. GOSSETT
Lloyd A. Gossett
TWUA Representative

Company Exhibit 4

Attachment 1

Darlington, S. C.
September 4, 1956

Fellow Workers:

A group of your fellow workers at Darlington Manufacturing Company have decided to write this letter. Maybe it won't be worded just right but we think you will understand.

Thursday is our one chance in a life-time to do something to improve working conditions at the Mill. If we should fail to take advantage of this chance we hate to think of what will happen to us after the NLRB Election. The management will bear down and we will be made to work even harder than ever before.

Just stop and think over what has been going on in the Mill for the past two or three years—you KNOW without anyone telling you. It makes no difference how hard you run your job, and how loyal you are to the Company—they just keep adding more work on and push and push us to get more and more.

* * *

As for the s-t-r-e-t-c-h-o-u-t system (only they don't call it that—they call it workload adjustment) if you are running your job well enough to take a few minutes off they come along the next day and say they have to make another "adjustment" which means more work. But, do you get an extra cent?—you don't, and if you complain they tell you to get out if you don't like it.

Is this the way American workers are supposed to be treated? Is this what so many of us fought for in the last war? We don't think so, and we need to do something about changing it.

Company Exhibit 4

A big "X" mark in that YES square on Thursday will be the first big step toward changing it. We don't need to tolerate these conditions any longer. A Union contract will set up some rules for the bosses to follow, and everyone will have to be treated fair and with justice, even though the boss likes the way we comb our hair or not.

They claim that the Mill is air-conditioned, but you know for yourself how many workers have been carried out after fainting from the heat and overwork.

* * *

From now until election they will promise anything—but don't pay any attention to their sugar-coated words. Just keep thinking about the s-t-r-e-t-c-h-o-u-t and the need for higher wages. And just keep thinking about how many workers, our friends, who have been shoved out to make room for pets! *These are the things they want us to forget*, until after the election.

* * *

Sincerely yours,

THE ORGANIZING COMMITTEE
OF DARLINGTON WORKERS.

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Company Exhibit 5

Yes, we all answer . . .

Yes for higher wages
Yes for company-paid pensions
Yes for grievance machinery
Yes for better insurance plan
Yes for job security
Yes for more paid holidays
Yes for end of favoritism

Yes for better vacations
and we vote Yes for TWUA-CIO

YES ☒ NO ☐

TEXTILE WORKERS UNION OF AMERICA, CIO

Company Exhibit 7

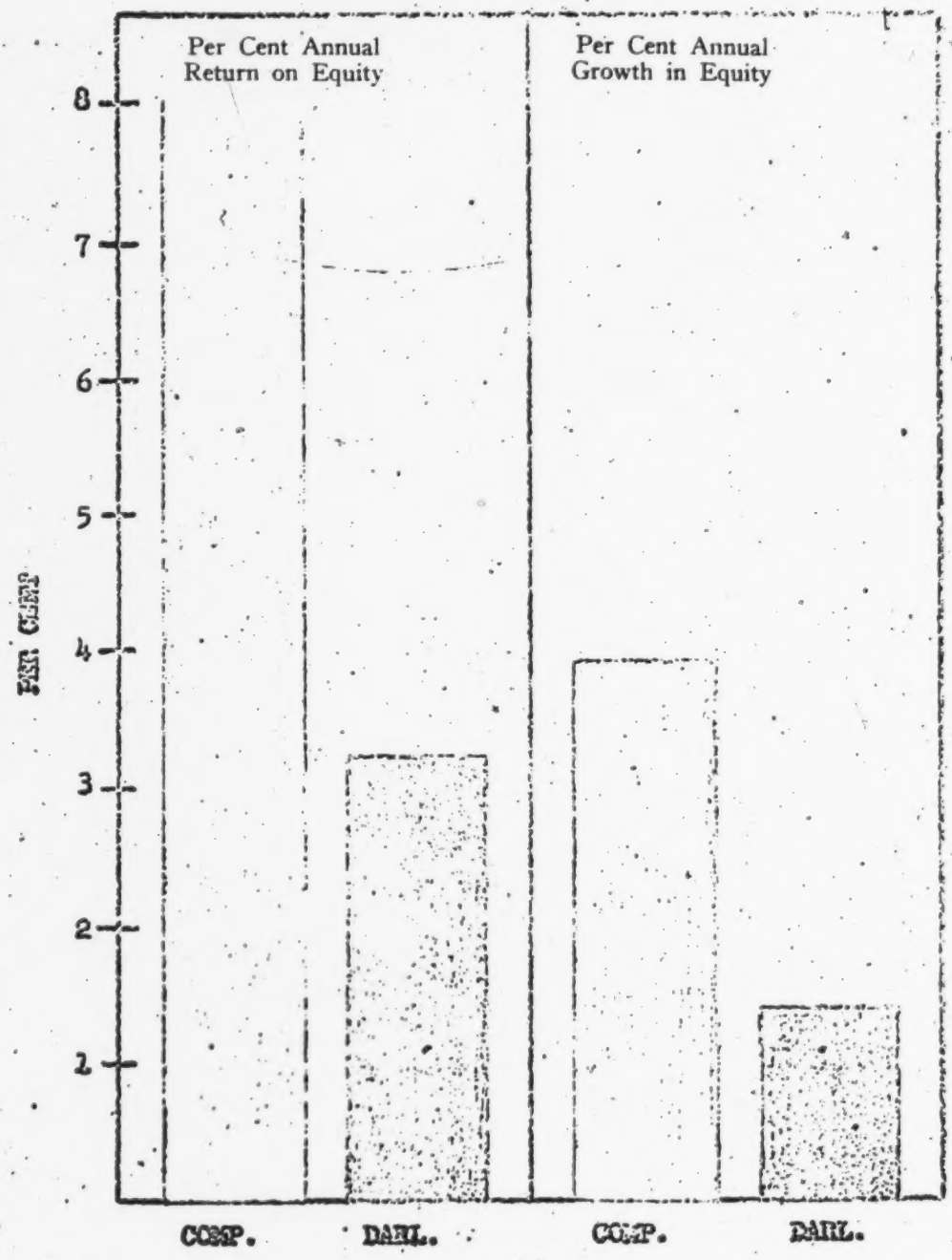
ARTICLE IV. Section 2. as follows:

Section 2. The Treasurer shall have charge of the books and of all financial and general business of the Company, under the supervision of the Directors, and he shall appoint such Agents, Superintendents and others as may be needed, and assign their respective duties and fix their compensations, each of whom shall be removable at his pleasure.

STOCKHOLDERS INVESTMENT AND EARNINGS EXPERIENCE—LAST FIVE YEARS

DARLINGTON VS. COMPETITORS

SOURCE: FORBES BUSINESS AND FINANCE—Jan. 1957
And Darlington Financial Statements.



Company Exhibit 8

Company Exhibit 10

PRINCIPAL CAPITAL ADDITIONS

1952-1956

DARLINGTON MANUFACTURING COMPANY

Item	1952	1953	1954	1955	1956	Total
OPENING AND PICKING IMPROVEMENTS						
1. New Feeder Hoppers	$ 1,500		$	$	$	$ 1,500
2. Additional Pickers			17,648			17,648
	$ 1,500		17,648			$ 19,148
CARDING IMPROVEMENTS						
1. Additional Cards	$	$	$ 10,200	$	$	$ 10,200
			10,200			10,200
DRAWING IMPROVEMENTS						
1. Replacement of Drawing	$	$	$ 6,860	$ 4,510	$	$ 11,370
			$ 6,860	$ 4,510		$ 11,370
ROVING IMPROVEMENTS						
1. New Roving Frames	$	$	$	$ 48,988	$	$ 48,988
				$ 48,988		$ 48,988

Company Exhibit 10

PRINCIPAL CAPITAL ADDITIONS

1952-1956

DARLINGTON MANUFACTURING COMPANY

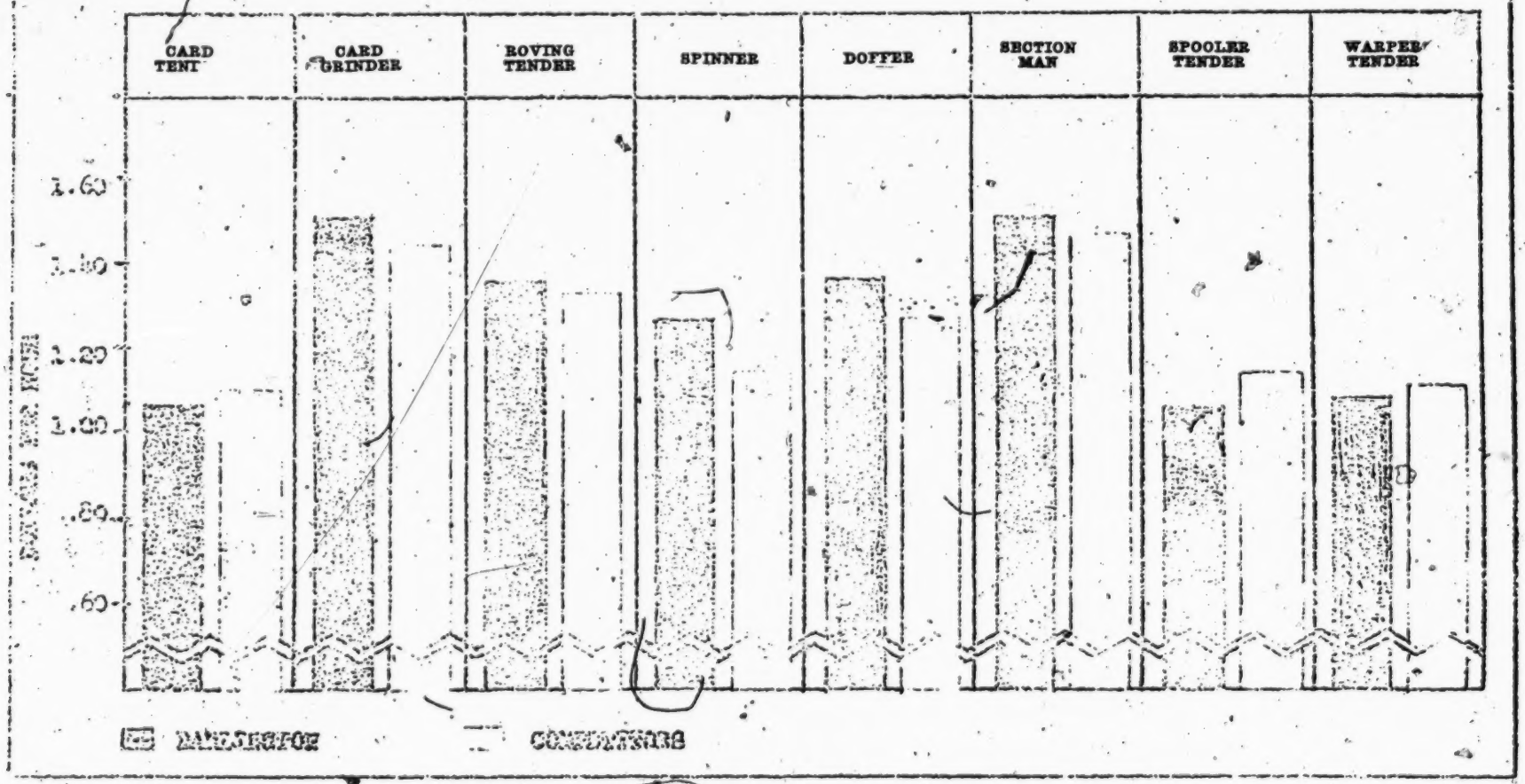
Item	1952	1953	1954	1955	1956	Total
SPINNING IMPROVEMENTS						
1. Additional Spinning Frames	$	$	$ 54,976	$	$ 9,065	$ 64,041
2. Pneumafil				39,403	65,531	104,934
3. Frame Cleaning Equipment					17,284	17,284
4. Improved Drafting System					70,339	70,339
5. Oilless Equipment					39,661	39,661
			$ 54,976	$ 39,403	$201,880	$296,259
PREPARATION IMPROVEMENTS						
1. Additional Spooling	$	$	$ 19,509	$ 4,509	$ 15,375	$ 39,393
2. Semi-Automatic Quill Stripper				3,168		3,168
3. Replacement of Size Boxes				12,743		12,743
4. Portable Tie-in Equipment				7,300		7,300
			$ 19,509	$ 27,720	$ 15,375	$ 62,604
WEAVING IMPROVEMENTS						
1. Loom Motors	$50,027	$	$	$ 34,973	$	$ 50,027 34,973
	$50,027			$ 34,973		$ 85,000

Company Exhibit 11A

IV-A

COMPARISON OF WAGE RATES
DARLINGTON VS. COMPETITORS

SOURCE: Bureau of Labor Statistics Report No. 82, November, 1954
And Darlington Payroll Records for 1954



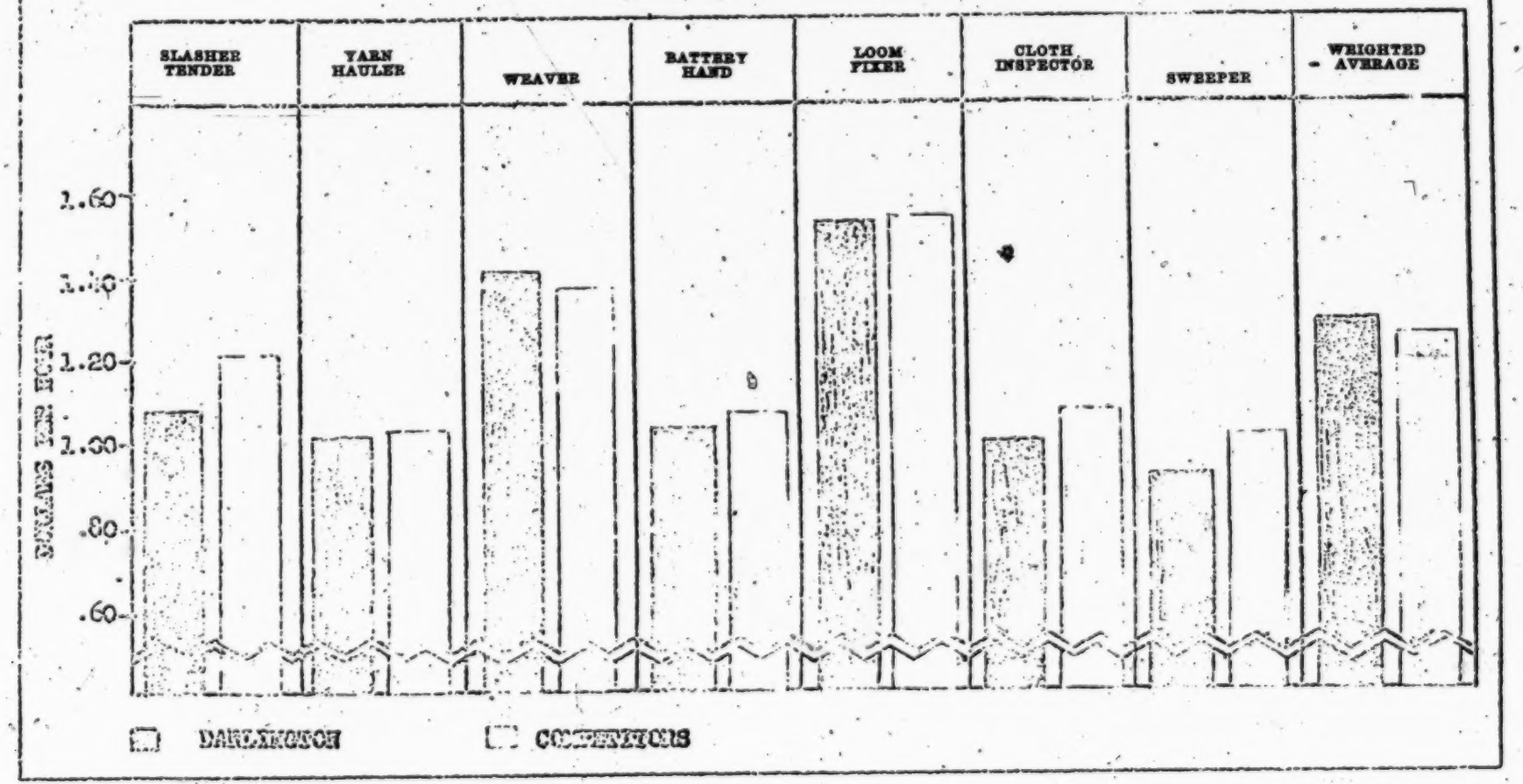
Company Exhibit 11B

IV-B.

COMPARISON OF WAGE RATES

DARLINGTON VS. COMPETITORS

SOURCE: Bureau of Labor Statistics Report No. 82, November, 1954 and Darlington Payroll Records for 1954.



PRINCIPAL CAPITAL ADDITIONS

1952-1956

DARLINGTON MANUFACTURING COMPANY

Item	1952	1953	1954	1955	1956	Total
OTHER IMPROVEMENTS						
1. Cloth Room	$ 3,130	$	$	$	$	$ 3,130
2. Materials Handling		3,935			4,870	8,805
3. Air Conditioning and Ventilation		2,777	8,124	1,149		12,050
	$ 3,130	$ 6,712	$ 8,124	$ 1,149	$ 4,870	$ 23,985
GRAND TOTAL	$54,657	$ 6,712	$117,317	$156,743	$222,125	$557,554
TOTAL FROM AUDITED STATEMENTS	$68,306	$25,279	$158,126	$174,570	$296,589	$722,870

Company Exhibit 10

Company Exhibit 13

	Construction			Type Fabric	1951 Yards	1951 Price Range	1952 Yards	1952 Price Range
1.	37½"	3.90	99x44	Poplin	5,635,000	18-1/2 - 27-1/2	7,072,000	18-5/8 - 20-1/2
2.	39"	4.55	80x60	Skip Dent	3,580,000	17 - 25		
3.	40"	3.25	105x84	Waffle Pique	3,359,000	26-3/4 - 35		
4.	39"	3.50	104x76	Pique	1,446,000	20 - 29-1/2	2,069,000	23 - 26
5.	39"	4.00	80x80	Print Cloth	800,000	19-1/2 - 19-3/4	1,614,000	19 - 23-1/2
6.	40"	3.70	80x80	Print Cloth			2,915,000	20-1/4 - 23-1/2
7.	39"	3.50	103x76	Pique			1,208,000	23 - 25-1/2
8.	38"	3.75	98x72	Waffle Pique			1,197,000	22-1/4 - 24-3/4
9.	38"	4.35	80x76	Print Cloth			700,000	18
10.	39"	3.60	100x76	Check			700,000	26-1/2
11.	37"	3.85	112x60	Broad-Cloth				
12.	39"	4.27	80x72	Print Cloth				
13.	40"	3.55	112x60	Broad-Cloth				
14.	40"	3.33	109x58	Broad-Cloth				
15.	39"	3.30	84x44	Oxford				
16.	39"	4.17	80x76	Print				

5.	39"	4.00	80x80	Print Cloth	800,000	19-1/2 - 19-3/4	1,614,000	19	- 23-1/2
6.	40"	3.70	80x80	Print Cloth			2,915,000	20-1/4	- 23-1/2
7.	39"	3.50	103x76	Pique			1,208,000	23	- 25-1/2
8.	38"	3.75	98x72	Waffle Pique			1,197,000	22-1/4	- 24-3/4
9.	38"	4.35	80x76	Print Cloth			700,000	18	
10.	39"	3.60	100x76	Check			700,000	26-1/2	
11.	37"	3.85	112x60	Broad-Cloth					
12.	39"	4.27	80x72	Print Cloth					
13.	40"	3.55	112x60	Broad-Cloth					
14.	40"	3.33	109x58	Broad-Cloth					
15.	39"	3.30	84x44	Oxford					
16.	39"	4.17	80x76	Print Cloth					
17.	40"	3.00	109x46	Poplin					
18.	38"	2.32	108x52	Poplin					
19.	41"	4.00	76x44	"Wicker-weave"					
20.	39"	4.20	80x48	Oxford					
21.	40"	4.16	80x72	Print Cloth					

Sales of Major Construction	14,820,000	17,475,000
% of Total Sales	91.5%	86.9%
Number of Other Styles	7	9
Total Sales-Other Styles	1,365,000	2,643,000
GRAND TOTAL SALES	16,185,000	20,118,000

Company Exhibit 13

1953		1954		1955		1956	
Yards	Price Range	Yards	Price Range	Yards	Price Range	Yards	Price Range
7,209,000	18-1/2 - 21	7,700,000	18-1/4 - 18-3/4	5,942,000	18-1/4 - 18-3/4	4,475,000	18-1/4 - 19
578,000	26 - 27						
2,596,000	23 - 25-1/4						
921,000	19-1/4 - 21-1/8						
2,657,000	20-1/2 - 22-1/4						
910,000	23-1/2 - 24-3/4						
2,679,000	22-3/4 - 25-1/2						
1,739,000	21 - 23-1/2	3,584,000	19-7/8 - 20-3/4				
		3,052,000	17-7/8 - 18-1/4	1,746,000	17-1/2 - 18-1/2	584,000	20-1/4 - 20-1/2
		1,317,000	21-5/8 - 23-1/4				
				16,263,000	22-1/2 - 24	7,594,000	22 - 23
				1,530,000	22-1/2 - 22-3/4		
				880,000	17-3/4	1,571,000	18-1/4

924,000 19-1/4 - 21-1/8

2,657,000 20-1/2 - 22-1/4

910,000 23-1/2 - 24-3/4

2,679,000 22-3/4 - 25-1/2

1,739,000 21 - 23-1/2

3,584,000 19-7/8 - 20-3/4

3,052,000 17-7/8 - 18-1/4

1,746,000 17-1/2 - 18-1/2

584,000 20-1/4 - 20-1/2

1,317,000 21-5/8 - 23-1/4

16,263,000 22-1/2 - 24

7,594,000 22 - 23

1,530,000 22-1/2 - 22-3/4

880,000 17-3/4

1,571,000 18-1/4

2,541,000 23-1/2 - 24-1/4

769,000 31

750,000 18-1/4

648,000 18-1/4 - 18-3/4

19,527,000
86.98%
14
2,921,000

22,448,000

26,361,000
87.9%
13
3,625,000

29,986,000

15,653,000
88.5%
9
2,025,000

17,678,000

19,209,000
89.2%
18
2,327,000

21,616,000

Union Exhibit 1

Officers of Darlington Manufacturing Company as of September 12th Through ~~October 17th,~~ 1956
Dec. 13th

Roger Milliken	President
H. A. Hatch	Vice President
J. M. Oeland	Secretary & Treasurer
C. W. Kable, Jr.	Assistant Treasurer

Directors of Darlington Manufacturing Company as of September 12th Through ~~October 17th,~~ 1956
Dec. 13th

F. G. Kingsley	Resigned September 12, 1956
H. A. Hatch	
J. H. Lyles	
Minot K. Milliken	
Roger Milliken	
W. S. Nicholson	
J. M. Oeland	
G. H. Milliken, Jr.	Elected September 12, 1956 in place of Mr. Kingsley

* * *

Colonel Claude L. Bowen discussed the Reserve Forces Act of 1955. It is briefly outlined below:

1. That an individual between the ages of 17 and 18½ may join the reserve and serve one night drill each week and a maximum of 17 days encampment each summer until he graduates from High School or reaches age 20. Then he must serve 6 months of active duty during which time he may not be sent overseas. After serving the 6 months the individual returns to his unit in the reserve, serving the one night a week drill and summer encampment until he has served 8 years from the original enlistment date. If it is impossible for him to meet the night

drills each week, then he must serve 30 days at summer camp.

2. An individual may elect the 6 year plan in the reserve. Under this plan he must serve 2 years on active duty, then 3 years in the ready reserve which consists of the weekly drill and the summer encampment, and one year in the stand-by reserve. He also has the right to go to summer camp for 30 days if he cannot attend the weekly drill.

Where there is a sufficient number of members in the reserve unit, the local Commander has the privilege of designating drill hours at times other than at night. This, of course, would help us due to shift work.

In the event that a member of a reserve unit does not fulfill his obligations satisfactorily he is subject to re-call on active duty for a period of 45 days a year. Colonel Bowen said that we will not feel the impact of this act until the summer of 1957.

Chairman Green appointed a nominating committee at the beginning of the meeting to nominate a Secretary for the group. This was necessary because L. L. Pugh of Laurens has transferred from Personnel to Production. The nominating committee nominated Bruce Stroupe of Judson and he was elected Secretary. The Officers are now:

J. W. Green—Excelsior, Union—Chairman
James R. Morrow—McCormick—Vice-Chairman
Bruce Stroupe—Judson—Secretary

The Fall meeting will be at Gaffney Manufacturing Company. The tentative date being the first part of October.

JRM

JRM:ks

Union Exhibit 2

STOCKHOLDERS WHO VOTED IN PERSON

Donald W. Barrett
Darlington, S. C.

W. A. Goodwin
Darlington, S. C

W. P. Law, Inc.
Darlington, S. C.

J. H. Lyles
Darlington, S. C.

Mr. Roger Milliken
% Income Collection Dept.,
The New York Trust Co.

Mr. G. H. Milliken, Jr.
% Income Collection Dept.,
The New York Trust Co.

Mr. W. S. Nicholson
Darlington, S. C.

Mr. J. M. Oeland
Darlington, S. C.

Mrs. Martha A. Oeland
Darlington, S. C.

Wm. H. B. Simpson
% Belk-Simpson Co.,
Greenville, S. C.

Henry N. Sloan
Box 5161
Columbia, S. C.

Marshall C. Stone, Jr.
Pacolet, S. C.

Union Exhibit 2

PERSONS VOTING BY PROXY

Name Stockholder	
T. Huggins Bowlen Greenville, S. C.	T. W. Buchanan, or Roger Milliken, or J. M. Oeland
Belks Department store Camden Camden, S. C.	J. P. Mozingo, III, or Roger Milliken, or J. M. Oeland
Belks Department Store Clinton Clinton, S. C.	LeRoy Want, or Roger Milliken, or J. M. Oeland
Mrs. Frank B. Bennett, III. Boston, Mass.	J. Randolph Taylor, or Roger Milliken
Lucy C. B. Simpson c/o W. H. B. Simpson, Trustee Greenville, S. C.	J. H. Lyles, or Roger Milliken, or J. M. Oeland
Martha Woods Twitty Darlington, S. C.	W. S. Nicholson, or Roger Milliken, or J. M. Oeland
S. C. National Bank, Trustee for Belk-Simpson Foundation 1944 Greenville, S. C.	J. H. Lyles, or Henry Simpson, or Roger Milliken, or J. M. Oeland
S. C. National Bank, Trustee for Belk-Simpson Foundation 1948 Greenville, S. C.	J. H. Lyles, or Henry Simpson, or Roger Milliken, or J. M. Oeland
Belk-Simpson of Darlington Darlington, S. C.	J. H. Lyles, or Roger Milliken, or J. M. Oeland
Katherine McArver Simpson c/o Henry Simpson Greenville, S. C.	J. H. Lyles, or Roger Milliken, or J. M. Oeland
Mary Elizabeth Simpson c/o W. H. B. Simpson, Trustee Greenville, S. C.	J. H. Lyles, or Roger Milliken, or J. M. Oeland
Miss Mary Elizabeth Simpson Greenville, S. C.	J. H. Lyles, or Roger Milliken, or J. M. Oeland
Luch C. B. Simpson c/o Henry Simpson Greenville, S. C.	J. H. Lyles, or Roger Milliken, or J. M. Oeland
Belk-Simpson Co. of Greenville Greenville, S. C.	J. H. Lyles, or Roger Milliken, or J. M. Oeland
Lucia C. Kern Darlington, S. C.	B. E. Coggeshall

Union Exhibit 2

STOCKHOLDERS WHO DID NOT RETURN THEIR PROXIES TO BE VOTED—NOR DID THEY APPEAR IN PERSON

L. B. Adams, Jr.
Greenwood, S. C.

L. B. Adams
Greenwood, S. C.

Mrs. Elizabeth F. Allen
Upper Montclair, N. J.

Belk-Simpson Co.,
Abbeville, S. C.

Belk-Simpson Co.,
Woodruff, S. C.

Belk-Simpson Co.,
Beaufort, S. C.

Webster Briggs
Scarsdale, N. Y.

Robert C. Brown
Pacolet, S. C.

W. J. Brown
Pacolet, S. C.

Charles Busch
25 Broad St., New York

John A. Byars
Chapel Hill, N. C.

Mr. Joseph L. & Mrs. Margaret S. Campbell
Spartanburg, S. C.

Miss Jeannie T. Cason
Charleston, S. C.

Miss Myrtle Clark
Glen Cove, N. Y.

Jesse Cleveland
Spartanburg, S. C.

Jesse M. Coburn
Whiteville, N. C.

Winston A. Cordes
Santa Monica, Calif.

Miss Anna W. Cutler
Boston, Mass.

Miss Elizabeth Jewell Dickens
Castalia, N. C.

James Dishington
Long Island City, N. Y.

W. A. Edwards
Atlanta, Ga.

Mrs. Eleanor Darlington Fisher
New York, N. Y.

Mrs. Emily Twitty Fitchett
Hartsville, S. C.

F. E. Fitchett
Hartsville, S. C.

Mary Green
Brooklyn, N. Y.

Katherine M. Glynn
Bellows Falls, Vt.

R. L. Hamilton
Landis, N. C.

Isaac E. Harris
Spartanburg, S. C.

Henderson Investment Co.
Spartanburg, S. C.

Gertrude Nash Hill
Katonah, N. Y.

Springfield Safe Deposit & Trust Co.
Springfield, Mass. acct. Mrs Gertrude L. G. Hill

Frederick H. Horlbeck
Charleston, S. C.

Union Exhibit 2

Mabel Keith Howard
Burlington, S. C.

Ruth E. Kable
Garden City, L. I., N. Y.

Wilson T. King
Charlotte, N. C.

Mrs. L. A. Langston
Darlington, S. C.

Sam P. Manning
Spartanburg, S. C.

Wm. S. Manning
Marietta, S. C.

Mrs. Mary Payne Mason
Greenville, S. C.

Budd C. Matthews
Newberry, S. C.

David Morris & Co.
New York, N. Y.

Mrs. Martha M. Monroe
Charlotte, N. C.

Ben C. McFadden
Morganton, N. C.

William D. McKee
Sylva, N. C.

Mrs. Francis W. Page
Greenville, S. C.

Richard Pigeon, Trustee u/w
Sarah G. Bassett
Boston, Mass.

R. J. Pitts
Clinton, S. C.

The Putnam Company of Fountain Inn
Fountain Inn, S. C.

Mrs. Helen S. Richardson
Dorchester, Mass.
Estate J. T. Rogers
c/o Mrs. T. E. Simpson
Darlington, S. C.

Julius [illegible] Schachner, Jr.
Charlotte, N. C.

Mrs. Florence A. Simons
Charleston, S. C.

Miss Mary Frances Smith
Tarrytown, N. Y.

H. Johnson Stevens
Thomasville, Ga.

Clarence Nelson Stone
West Newton, Mass.

William F. Tjarks
Ulster County, N. Y.

Mrs. Erma Williams
Ocean Grove, N. J.

Percy H. Williams
Waterville, Maine

The Robert I. Woodside Co.
Greenville, S. C.

Jane F. Zimmerman
Greenville, S. C.

Union Exhibit 2

STOCKHOLDERS AND THEIR PROXIES

Name of Stockholder	Roger Milliken	J. M. Oeland	Roger Milliken or J. M. Oeland
~~Anna W. Cutler, Boston~~, Mass			x
Estelle Armstrong, New York			x
James M. Bailey, Greenville, S. C.			x
Ethel G. Bell, Portland, Maine			x
C. A. Deltramini, W. Englewood, N. J.			x
Florence T. Blunt, Kennebunkport, Me.			x
~~T. Higgins Bowden,~~ Greenville, S. C.			x
Elizabeth M. Brandt, Fairfield, Me.			x
J. P. Brunson, Darlington, S. C.			x
Louise Burghardt, Cleveland Heights, O.			x
George P. Campbell, Greenville, S. C.			x
M. L. Cates Administrator for Est. L. Z. Cates			x
M. L. Cates Executor, Spartanburg, S. C. for Est. Florine C. Simpson, Spartanburg, S. C.			x
Central Trust Co., Greenwood, S. C.			x
Mary B. O'Donaghue & Eileen Chapman, Glen Rock, N. J.			x
Mrs. Marcon T. Chapman, Inman, S. C.			x
Alpha B. Childress, Greenville, S. C.			x
Jesse M. Coburn, Whiteville, N. C.			x
The Cotwill Manufacturing Corporation, Wilmington, Del.			x
S. J. Craig, Jr., Columbus, N. C.			x
Nelle W. Crowell, Washington, D. C.			x
Gertrude M. Cousens, Portland, Me.			x
Erwinn N. Darrin, Spartanburg, S. C.			x
Sue Burnette Davis, Atlanta, Ga.			x
A. Jefferson Dillard, Jr., New York, N. Y.			x

Union Exhibit 2

Name of Stockholder	Roger Milliken	J. M. Ocland	Roger Milliken or J. M. Ocland
Deering Milliken & Co., Inc., New York			x
Estate Land & Securities Co., Hartsville, S. C.			x
Mrs. Ruth Y. Evans, Anderson, S. C.			x
Henry B. Fernald, Jr., Montclair, N. J.			x
Farmers Loan & Trust Co., Greenwood, S. C.			x
G. H. Milliken, et al Trustee for Anne M. Franchetti, New York, N. Y.			x
Jos. C. Farrell, Drayton, S. C.			x
Harold O. Caddy, Greenville, S. C.			x
Hallie L. Catlin, Raeford, N. C.			x
Margaret P. Catlin, Raeford, N. C.			x
Sara C. Gibbs, Bridgton, Me.			x
Sue L. Gignilliat, Seneca, S. C.			x
~~W. A. Goodwin, Darlington,~~			x
Elizabeth Gray, Rochester, N. Y.			x
David J. Grossman, Phila., Pa.			x
Mrs. Carson Y. Hudson, Spartanburg, S. C.			x
John C. Galbraith, Spartanburg, S. C.		x	
Mary O. Galbraith, Spartanburg, S. C.		x	
W. W. Anderson, Darlington, S. C.			x
Marie T. Hagenbuch, Urbana, Ohio		x	
Waddell M. Hagin, Albany, Ga.	x		
J. Calhoun Harris, N. Y. C.			x
Harold A. Hatch, N. Y. C.			x
Helen D. Hodges, Charleston, S. C.			x
Annis L. Holbrook, Maplewood, N. J.			x
Jane Darlington Irwin, New York			x
Mrs. Alma P. Julia, Lewiston, Me.			x
King & Co., New York			x
Ora Rimes Kingsley, Trustee under Indenture etc., New York, N. Y.			x

Union Exhibit 2

Name of Stockholder	Roger Milliken	J. M. Oeland	Roger Milliken or J. M. Oeland
Ora Rimes Kingsley under Deed of Trust, New York, N. Y.			x
Francis G. Kingsley, New York			x
Herman S. Langford, Newberry, S. C.			x
Maria-Vittoria Lindhorst-Homan, New York			x
Agnes Jane Livermore, Somerset, Mass.			x
Jess I. Lang, Greenville, S. C.		x	
Nell H. Metzger, Darlington, S. C.	x		
Mannie Lee E. Mabry, Ft. Myers, Fla.			x
Andrew A. Manning, Spartanburg, S. C.			x
Wm. S. Manning, Marietta, S. C.			x
Wm. H. Mauldin, Charlotte, N. C.			x
Mrs. Bennie S. Meeks, Pacolet, S. C.			x
Catherine S. Mellor, Haverford, Pa.			x
G. H. Milliken, et al Jr. Trustee for Roger Milliken, New York, N. Y.			x
G. H. Milliken, et al Jr. Trust for G. H. Milliken, Jr., New York			x
G. H. Milliken et al Trust for Anne Franchetti, New York			x
G. H. Milliken, et al Trust for Joan Stroud u/w G. H. Milliken, New York			x
G. H. Milliken, et al Trust for Maria G. Vitelli, New York			x
G. H. Milliken, et al Trust for Piero Senni, New York			x
G. H. Milliken, et al Trust for Leone Senni, New York			x
G. H. Milliken, et al Trust for Filippo Senni, New York			x
G. H. Milliken, et al Trust for Joan Stroud u/d 12/9/57, New York			x
~~Roger Milliken, Spartanburg, S. C.~~			x
~~Gorrish H. Milliken, Jr., New York, N. Y.~~			x

Union Exhibit 2

Name of Stockholder	Roger Milliken	J. M. Oeland	Roger Milliken or J. M. Oeland
Minot K. Milliken, New York, N. Y.			x
Elizabeth H. Milliken, S. Portland, Me.			x
Eula Moore, New York, N. Y.			x
Virginia M. Moses, West Point, NY			x
Harold C. McCarley, Greenville, S. C.			x
Jane MacLennan, SCOTLAND			x
Arthur C. McCall, Greenville, S. C.			x
Margaret T. MacDuffie, Fairfield, Me.			x
Arthur S. Nesmith, Reading, Mass.			x
Wm. C. Neville, Newberry, S. C.			x
~~J. M. Oeland,~~ Darlington			x
~~Martha A. Oeland~~, Darlington			x
Joseph Weare Peason & Adelene Pearson, Rolling Hills, Calif.			x
Anne Gardiner Pier, Williamstown, Mass.			x
Roy Pier, Williamstown, Mass.			x
William Putman, care of Jane F. Putman, Laurens, S. C.			x
William P. Putman Jr., Laurens, S. C.			x
Mrs. Sophie E. Reames, Greenville, S. C.			x
Earle M. Rice, Anderson, S. C.			x
Joseph E. Rice, Arlington, Va.			x
Leon L. Rice, Jr., Winston-Salem, N. C.			x
Leon Rice, Anderson, S. C.			x
Sara W. Rice, Anderson, S. C.			x
S. C. National Bank, Trustee Peace Fund, Greenville, S. C.			x
Gian ?Andrea Sennim, New York			x
Florence Isabel Shipway, Princeton, N. J.			x
Louise Gibbs Sherey, Bridgton, Me.			x
Geo. Edward Simmons, Drayton, S. C.			x

Union Exhibit 2

Name of Stockholder	Roger Millikan	J. M. Ocland	Roger Millikan or J. M. Ocland
Harry C. Smith, Maplewood, N. J.			x
Donald B. Smith, Clinton, S. C.			x
Ansel M. Smith, Greenville, S. C.			x
William Allen Smith, Syosset, N. Y.			x
Sterling L. Smith, Greenville, S. C.			x
Mrs. Emma Sompayrac Society Hill, S. C.			x
Marshall C. Stone, Pacolet, S. C.			x
Maxie B. Stone, Spartanburg, S. C.			x
Marshall C. Stone, Jr., Pacolet, S. C.			x
Joan M. Stroud, New York			x
W. B. Dixon Stroud, New York			x
Edna M. Strybing, Patchogue, N. Y.			x
Claribel F. Sulzberger, Mantoloking, N. J.			x
Howell NorSwissbyharbor, Maine	x		
Wallace B. Taylor, Spartanburg, S. C.			x
Eleanor D. F. Trevor, New York			x
T. D. Truluck, Union, S. C.			x
Alice W. Wagener, Charleston, S. C.			x
Robert Winthrop Co., New York			x
James W. Waters, Spartanburg, S. C.	x		
Coleman B. Waller, Spartanburg, S. C.			x
Sam W. Davis, Adm Est Daisy Walkup Houston, Texas	x		
Elsie Ward, New York			x
Randolph G. Watson, Iva, S. C.			x
Mrs. J. W. Watson, Greenwood, S. C.			x
Emmie A. Willis, Spartanburg, S. C.	x		
Rachel T. Wilson, Greenville, S. C.			x
Wm. H. Woolley, New York			x
J. Stanley Woolley, Middletown, N. Y.			x

PHOTO COPY: From SPARTANBURG, SOUTH CAROLINA, SPARTANBURG HERALD, JANUARY 10, 1956

1301

Union Exhibit No. 4

Milliken Says

Unions Retarding Growth Of Industry in County

Roger Milliken, president of Deering-Milliken Co., Thursday hit at unionism as a primary reason for Spartanburg County's failure to get more industry.

Speaking before the Kiwanis Club, the textile leader declared that future industrial development of the county will hinge on the reception this area gives the Kohler Co. and the Bigelow-Sanford carpet mill.

"IF WE CAN look with pride" on the labor situation these industries find here the future is bright. If the labor situation is not good for them "I don't know about the future," Mr. Milliken said.

He warned that a union leader at the Kohler plant in Wisconsin has commented that "the union will be on hand to greet Kohler when and if Kohler builds a new plant in Spartanburg County." (Kohler is expected to begin construction soon on a new plant near Camp Croft.)

"The answer to the future is in the hands of Spartanburg citizens," Mr. Milliken continued.

"The question is how are we going to greet these greeters?"

Mr. Milliken told Kiwanians that two questions must be answered in judging the future industrial growth in this county: (1) Will the textile industry continue to grow?; and (2) Will Spartanburg get its share of diversification?

The primary answer to both of these lies in the "situation in regards to organized labor;" and "what has been and is the attitude of our legislators on legislation affecting business." Greenville and Anderson at present both come

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THE TEXTILE official quoted former Gov. James F. Byrnes as saying that the W. R. Grace Co. decided to put its Cryovac plant at Simpsonville because the company felt that the political climate was good, and that there would be cooperation between the workers and management, rather than conflict.

Mr. Milliken declared that "as a director of three, I know that these reasons are correct. I tried very hard to get Cryovac for Spartanburg County . . . .

"The reason Spartanburg didn't get it was that when Cryovac found there are five plants in the county with organized unions they decided they could not risk it."

He continued that union "feather bedding practices" had led to Deering-Milliken decisions to liquidate three textile plants—two in Maine and one in Alabama. The unions would not allow the plants to get maximum benefit from new machinery, he charged.

"To show that it is not geographical, last week we bought a plant in Maine. It is not organized, and we think we can compete favorably . . ."

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The primary answer to both of these lies in the "situation in regards to organized labor;" and "what has been and is the attitude of our legislators on legislation affecting business." Greenville and Anderson at present both come out better than Spartanburg on these points, he added.

Mr. Milliken told how Owens-Corning Co. a few years ago had decided to put a large plant at Camp Croft. However, the firm went to Alabama instead when officials decided the labor situation was too risky here, he said.

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MR. MILLIKEN said that Saco-Lowell Co. abandoned plans for a sizeable plant at Hendersonville when it found that many other firms had been organized. Saco-Lowell then moved to Easley, where there are plans for extensive expansion, he added.

The Deering-Milliken president told Kiwanians that Walter Reuther and his brother once went to Russia to study. Reuther wrote to a friend in America, addressing him as "Comrade," and urging him to "keep up the fight for Soviet America," Mr. Milliken said.

"Let's fight together to keep this foreign philosophy out of our town.

"Let's work together to the end that Spartanburg and South Carolina can grow together and demonstrate to the rest of the country the advantages of teamwork between workers and management. That is our secret weapon."

Mr. Milliken was introduced by W. Priestly Conyers. Officials of several textile mills in the county were guests of the club.

Union Exhibit 5

Appendix II

FOR RELEASE AT 4:00 P.M., EDT, SEPTEMBER 27, 1956

James C. Hagerty, Press Secretary to the President

THE WHITE HOUSE

TEXT OF THE ADDRESS BY THE HONORABLE SHERMAN ADAMS, THE ASSISTANT TO THE PRESIDENT, AT THE ANNUAL MEETING OF THE NORTHERN TEXTILE ASSOCIATION AT PORTSMOUTH, NEW HAMPSHIRE, AT 4:00 P.M., EDT, THURSDAY, SEPTEMBER 27, 1956.

Yesterday I came across the medal which the National Association of Cotton Manufacturers gave me in 1954. The inscription mentions something about my participation in "meeting challenges to the welfare of New England." When I received your invitation to join in this meeting, I thought it was about time to commence to do something about living up to this billing.

While I never was employed in your industry itself, I can truthfully say that I was literally raised in the business because that was my family's livelihood while I was a dependent charge. It has, therefore, seemed to me not inappropriate to come here to make some brief remarks on a subject of great concern to this basic New England industry.

Now, let's get to business. Every man in this room knows that it is the policy of the Eisenhower Administration to promote the continued growth of trade between

nations. This is in our self-interest. Every farmer knows this. Many great manufacturers and millions of wage earners do not need to be reminded of the importance of our foreign trade. It is elementary that the benefits of international commerce cannot flow in just one direction. The whole pattern of the exchange of goods between nations should be beneficial to every participating country. Thus, a fundamental appreciation of the problems of every nation is the result. The effect of such a relationship has a tremendous impact on promoting a real peace in the world.

For us, the increasing flow of foreign commerce has brought with it some problems. One of these is the concentrated low-price competition from abroad. In your particular industry this has threatened to weaken one of our basic livelihoods. This threat is no mere phantom. It is real, and this Administration recognizes it.

There are those who think that we believe this industry is expendable. This is malicious nonsense. The President has made it clear again and again that our foreign trade policy must not wreck our own enterprises or destroy the jobs of American workers. We do not intend that it shall.

The truth is that we can deal with our difficulty successfully without altering fundamentally our foreign trade policy. I want to speak specifically as to the means of working out with your industry a satisfactory solution. I believe that we have achieved one.

First, let's look at some of the factors that make up our policy.

The President has repeatedly emphasized his conviction that, as a Nation, American self-interest has much to gain from the expansion of foreign commerce. Last year the value of our exports through strictly commercial channels

exceeded $14 billion. This year the figure will probably exceed $16 billion. Roughly three-quarters of these exports consisted of manufactured or semi-manufactured goods. You can understand how vital to the livelihood of millions of Americans and to the life of many American industries this trade has become. For instance, the product of 30 million acres of farm land is sold overseas.

On the other hand, our imports, that is, the products we purchased from others, were about $3 billion below exports. The difference had to be paid for largely by American tax dollars spent overseas in mutual security, and other programs, including loans, abroad. To protect and expand American export markets, we simply have to find the means to promote mutually beneficial two-way trade. These are elementary economic facts.

No basic transaction is sound which is not beneficial to all the parties to it. To any competent businessman it is evident, I am sure, that orderly development of world trade has to be the cornerstone of any successful foreign trade policy. It is one thing to create a market for goods, and quite another to exploit a market already established. Now these thoughts are particularly relevant when we turn to the problems of competition from nations whose wage levels are lower than our own.

It is true, as we all know, that the textile industry has recently been faced with a resurgence of competition from low-priced imported goods. While the volume has been relatively small in proportion to our total domestic output, certain concentrations of these imports in increasing volume have created special problems for particular producers, and have had an unfavorable impact on the confidence of the entire industry, particularly as it looks ahead to the future.

Union Exhibit 5

Most of us hold to the view that legitimate competition is a healthy stimulus to progress. The ability of American business brains to challenge competitive obstacles with initiative and ability has fostered the growth of the giant that American industry has today become. With us it is traditional to welcome fair and equitable competition. All we have asked is that the rules are the same for all the competitors. When they differ, then it is proper that Government take a hand in maintaining the equity. This responsibility has long ago been recognized, and this Administration has adopted procedures for that purpose.

The textile industry is not itself in a wholly unique position in facing foreign competition. This industry, however, does face serious problems that are wholly unrelated to imports. They are well known to all of you, and there is no need for me to dwell upon them here. Yet these have increased the present aggravation. In consideration of all factors involved, it has seemed urgent to undertake to find some extraordinary means to provide a ready remedy for the misfortunes of the textile industry that stem from the import problem.

This Administration, therefore, undertook more than six months ago a continuing and intensive study of this problem. A series of constructive discussions were held with representatives of the Japanese Government.

Early this year, you will recall that the Japanese imposed some voluntary limitations on certain cotton textile exports to the United States. You remember that last May an additional extension of this curtailment program was announced. Since May, responsive to our discussions with the Japanese, a much more comprehensive plan has evolved, and has today been communicated by the Japanese Government to our Secretary of State.

Union Exhibit 5

An examination of this communication will disclose that the Japanese Government has offered definite and constructive assurances to our Government. There are certain (and somewhat numerous) details to be worked out and agreed to before the effect of the new plan will be fully realized. I shall now read the four principal points contained in the Japanese note.

The purpose of the arrangement is to bring about orderly marketing of Japanese cotton textiles in the United States by avoiding excessive and injurious concentration on any particular item during any specific period. It is their intention to achieve a broader diversification of cotton textile exports while maintaining voluntary control of the volume both in total quantity and within specific categories.

The principal features to be incorporated in this program for 1957, and in subsequent years are:

(1) The ceiling of exports of cotton cloth, cotton apparel and other cotton manufactures will not exceed the level of trade during 1955.

(2) Within this ceiling, subsidiary ceilings will be established, in addition to those already established, to such items which may tend to be exported in excessive concentration, where such exports may cause undue hardship to any particular segment of the textile industry of the United States. The Japanese have represented to us that velveteens and ginghams, among other items, will be the subject of special study for further reduction.

(3) Efforts will be made to distribute exports equally by quarters so far as practicable, modified only as may be necessary to meet seasonal demands for special items.

(4) This arrangement, which will become effective January 1, 1957, will be effective for an indefinite number of years, but may be reviewed annually.

It is obvious that the Japanese have undertaken voluntarily and in good faith a forthright and broadly inclusive program, which will, of course, be of stabilizing and long range benefit to the textile industry of both our countries. With your cooperation, patience, and understanding, this progam will provide a basis for dispelling misgivings about the future as it is affected by present uncertainties of the pattern of textile imports from Japan.

I should like to suggest that in broader aspect, this arrangement is expressive of policies already stated, and prophetic of Federal action most certainly to ensue in similar exigencies. Under these circumstances, the reluctance of manufacturers to expand and modernize, and the reticence of investment houses to arrange financial facilities should be dispelled. To repeat, we shall not permit the Government to stand idly by while industries wither and job opportunities are destroyed.

This Administration knows only too well that the welfare of American business enterprise and the security of American workmen's jobs are based on confidence. The present prosperity and generally satisfactory conditions of American business are soundly founded on that confidence, which, if destroyed, brings evil days to our country. This we do not intend shall happen.

PART II

Exhibits at 1958 Hearings

General Counsel's Exhibit A-12

UNITED STATES OF AMERICA
BEFORE THE
THE NATIONAL LABOR RELATIONS BOARD
ELEVENTH REGION

In the Matter of DARLINGTON MANUFACTURING COMPANY ROGER MILLIKEN DEERING, MILLIKEN & CO., INC. and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO	Case No. 11-CA-1071

STIPULATION

IT IS HEREBY STIPULATED by the attorneys for the respective parties hereto that, in lieu of offering evidence as to any of the matters herein referred to, and solely for the purposes of this proceeding, the facts stated below are to be deemed true as of October 1, 1956:

1. Members of the Milliken family (meaning the lineal descendants of Seth Milliken) own a majority of the voting shares of Deering, Milliken & Co., Inc.

General Counsel's Exhibit A-12

2. Members of the Milliken family own a majority of the voting shares of The Cotwool Manufacturing Corporation, by direct ownership of such shares and by ownership of a majority of the voting shares of corporations owning shares in The Cotwool Manufacturing Corporation.

3. The Cotwool Manufacturing Corporation is engaged in the manufacture of textiles through its Judson, Cowan and Farnsworth divisions, and owns all or substantially all of the voting shares of the following textile mill corporations:

(a) Abbeville Mills Corporation;

(b) Excelsior Mills Inc.;

(c) Gayley Mill Corporation;

(d) Hatch Mill Corporation;

(e) Machias Mill Inc.;

(f) Milliken Automotive Fabrics, Inc.

4. Members of the Milliken family, by direct ownership of shares and by ownership of a majority of voting shares in the corporations named in paragraphs 1 and 2 above, own a majority of the voting shares of the following corporations:

(a) Monarch Mills, in which approximately 44% of the voting shares are owned by "outside" stockholders (meaning persons not connected with the Milliken family or with any corporation named in this stipulation);

(b) The Hartsville Cotton Mill, in which approximately 45% of the voting shares are similarly owned by "outside" stockholders;

(c) Pacolet Manufacturing Company;

(d) Gaffney Manufacturing Company;

(e) Drayton Mills;

(f) Laurens Mills.

The percentage of stock held by "outside" stockholders in the corporations named in (c), (d), (e) and (f) above ranges from 12% to 28%.

Shares of stock in each of the corporations named in this paragraph are traded over the counter and are regularly quoted by securities dealers in Charlotte, North Carolina, Greenville, South Carolina, and Spartanburg, North Carolina, to their customers throughout the United States.

5. In 1956, and until approximately November 15, 1956, the shares of Darlington Manufacturing Company were owned by the following stockholders or classes of stockholders:

(a) Deering, Milliken & Co., Inc.	41.4%
(b) The Cotwool Manufacturing Corporation	18.3%
(c) Roger Milliken and members of his immediate family	6.4%
(d) Directors and employees of Deering, Milliken & Co., Inc.	2.9%
(e) "Outside" stockholders (see paragraph 4(a) above)	31.0%
	100.0%

6. For the purposes of this stipulation, in the case of shares of stock registered in the name of a trustee, or held

by a bank or brokerage house in its own name or the name of a nominee, the beneficial owner or owners of the shares have been deemed the owner.

Dated: Charlotte, North Carolina
October 20th, 1958.

JOHN M.
For the General Counsel

BENJAMIN WYLE

by NATHANIEL H. JANES
Attorney for Charging Party

PRICE & POAG

by JOHN R. ????
Attorneys for Respondent
Darlington Manufacturing
Company

TOWNLEY, UPDIKE, CARTER
& RODGERS

by ?????.... N. UPDIKE
Attorneys for Respondents
Deering, Milliken & Co., Inc.
and Roger Milliken

General Counsel Exhibit B-2

January 12, 1955

Mr. Minot K. Milliken
Deering Milliken & Company
New York, N. Y.

Dear Mr. Milliken:

As requested in your telephone conversation we are enclosing herewith the accruals we are making each period and total for the year on our period statements. You will note that we have broken this down in two groups, one, the recurring estimated accruals, and the other those based on wages, etc paid each period. We trust that you will find these in order.

Very truly yours,

J. M. OELAND
Treasurer

Enc.
jmo-m

General Counsel Exhibit B-3

September 30, 1955

Mr. Minot K. Milliken
Deering Milliken & Company
New York, N. Y.

Dear Minot:

We have discussed today your request for our estimated profits before taxes for fiscal year ending November 30, 1955. We plan to teletype you Monday that we estimate this at $300,000.

We are enclosing herein a list of extraordinary expenses that we anticipate before November 30. In this list there are two items that possibly will be capitalized by revenue agents at a later date. On the other hand, both items are replacements, and since we here at Darlington have been expensing all replacement items I feel it is well for us to try it again. The items in question are the umbrella creels for all of our filling spinning plus the Whitin superdraft being placed on part of our filling spinning.

We have a cushion in our cloth and in-process inventory of about $35,000 plus the profit in hedges that we have not shown amounting to $7500 to offset part of the attached list.

I am hoping that our accruals for the service departments will take care of their charges. We have tried to be careful

in accruing some additional to last year's charges and hope that they will be sufficient to cover.

Very truly yours,

J. M. Oeland
Treasurer

Enc.
jmo-m
cc: Mr. Roger Milliken

General Counsel Exhibit B-5

September 19, 1956

Mr. Minot K. Milliken
240 Church Street
New York, N. Y.

Dear Mr. Milliken:

This is in reply to your request that we furnish you our best estimate of the pre-tax financial result for Darlington for year ending December 2, 1956. We note that you appreciate the fact that there are problems in arriving at this estimate, and many eventualities might throw us off.

Our best judgment at the moment is that we will lose around $10,000 for the year in question. This is arrived at by the following figures:

Net income before income taxes through 9/2/56		$146,158
Less adjustments for outstanding items as follows:		
80 Frames of Duo-Roth	$ 70,339	
Dixon front rolls & saddles	30,099	
Accounts payable to date	19,956	
Settlement contract Fiske-Carter Co.	35,000	155,394
		($ 9,236)

We have discussed with Mr. Kable the question of expensing items we had contemplated expensing and it was his opinion we should proceed as planned, and, therefore, the big items of Duo-Roth and Dixon equipment. We had discussed with Mr. Truluck our position on loss in hedges and

cotton purchases. It is his opinion that the loss in hedges as of today amounting to about $50,000 would be offset in profit on cotton purchases. We have omitted any anticipated profits on sales during the period we will be running. It is our opinion that these profits will be offset with a loss as we tail out our operations. We do have some supplies that we are attempting to return on which we expect to get credit that are not material. We have ascertained from our Purchasing Department that we will be unable to return the large items like the Duo-Roth and Dixon saddles.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m

General Counsel Exhibit B-6

March 12, 1956

Messrs: Marshall Stone, W. A. I. Sibley, J. J. Norton, Jr., J. M. Oeland, J. T. Shotwell

I would like to arrange a meeting with you on March 23rd. at 2.30 pm. at Monarch Mills if it is convenient with all of you.

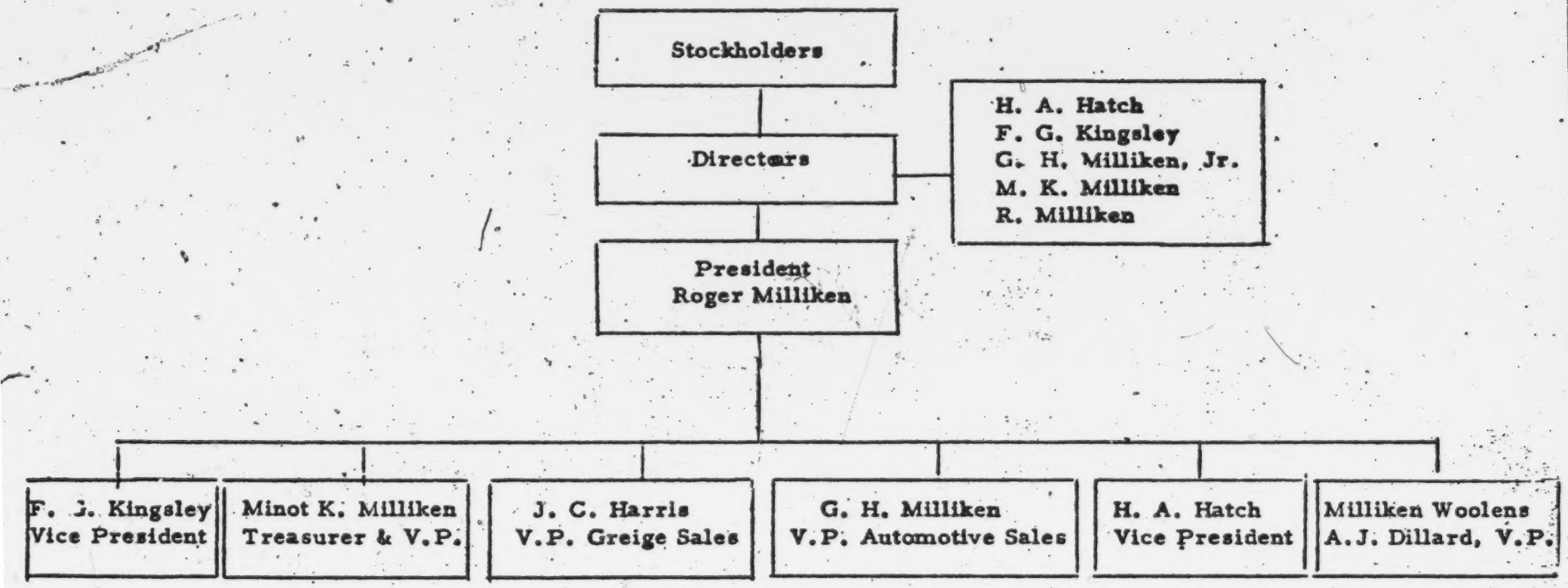
This meeting is in relation to my taking over Quality Control for all the cotton mills so that we may have an understanding with each other from the beginning in order that I may render better service to all of you.

If this date is not convenient please notify me before March 16th. as I am leaving to visit the fine goods mills for the week of March 19th.

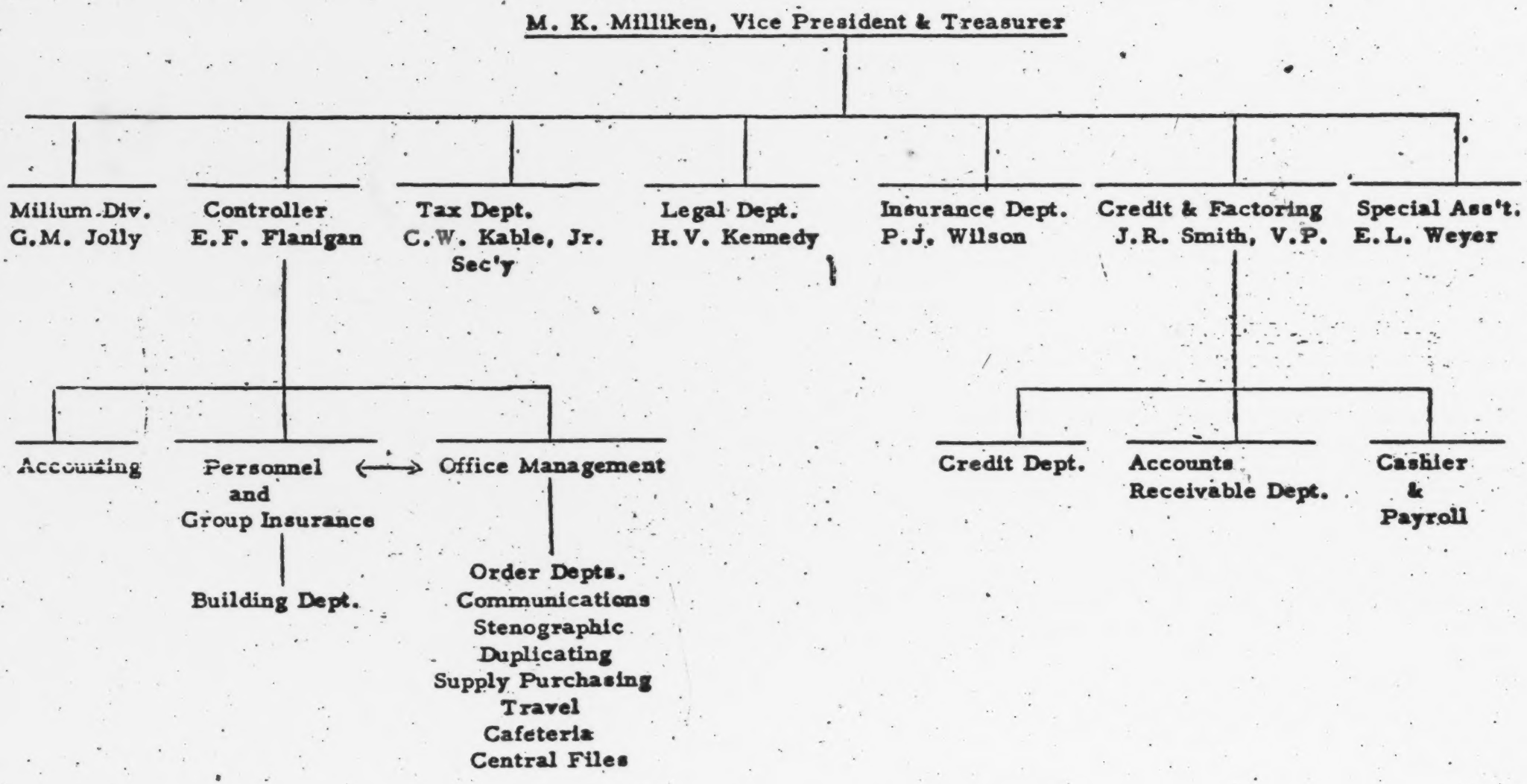
JTS:mcl
cc to Mr. A. J. May
Mr. A. A. Wright
Mr. R. Milliken

General Counsel Exhibit B-9A

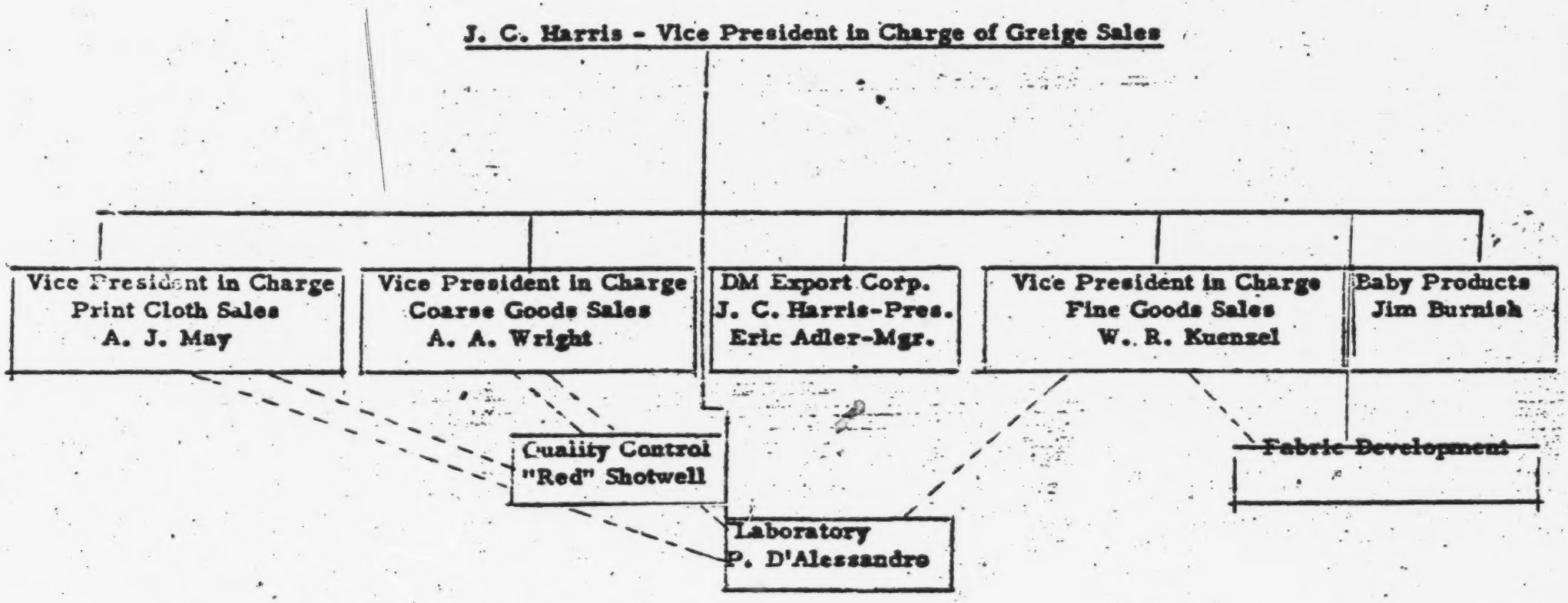
Deering, Milliken & Co., Inc.



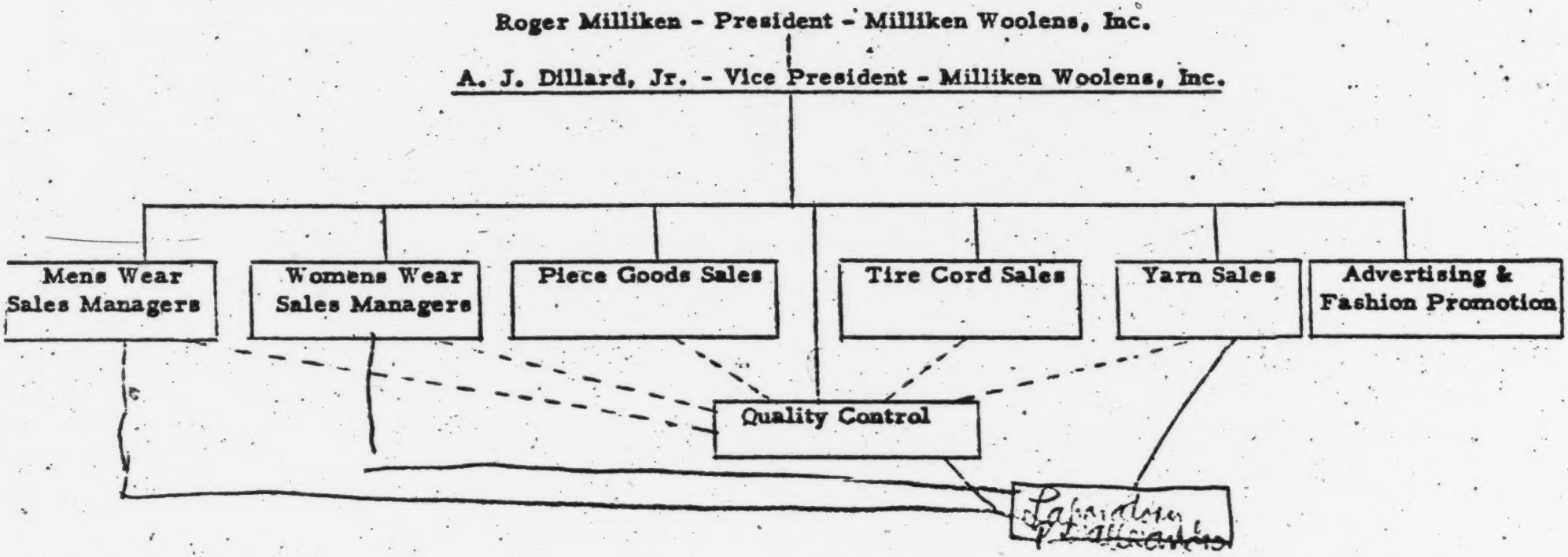
General Counsel Exhibit B-9B

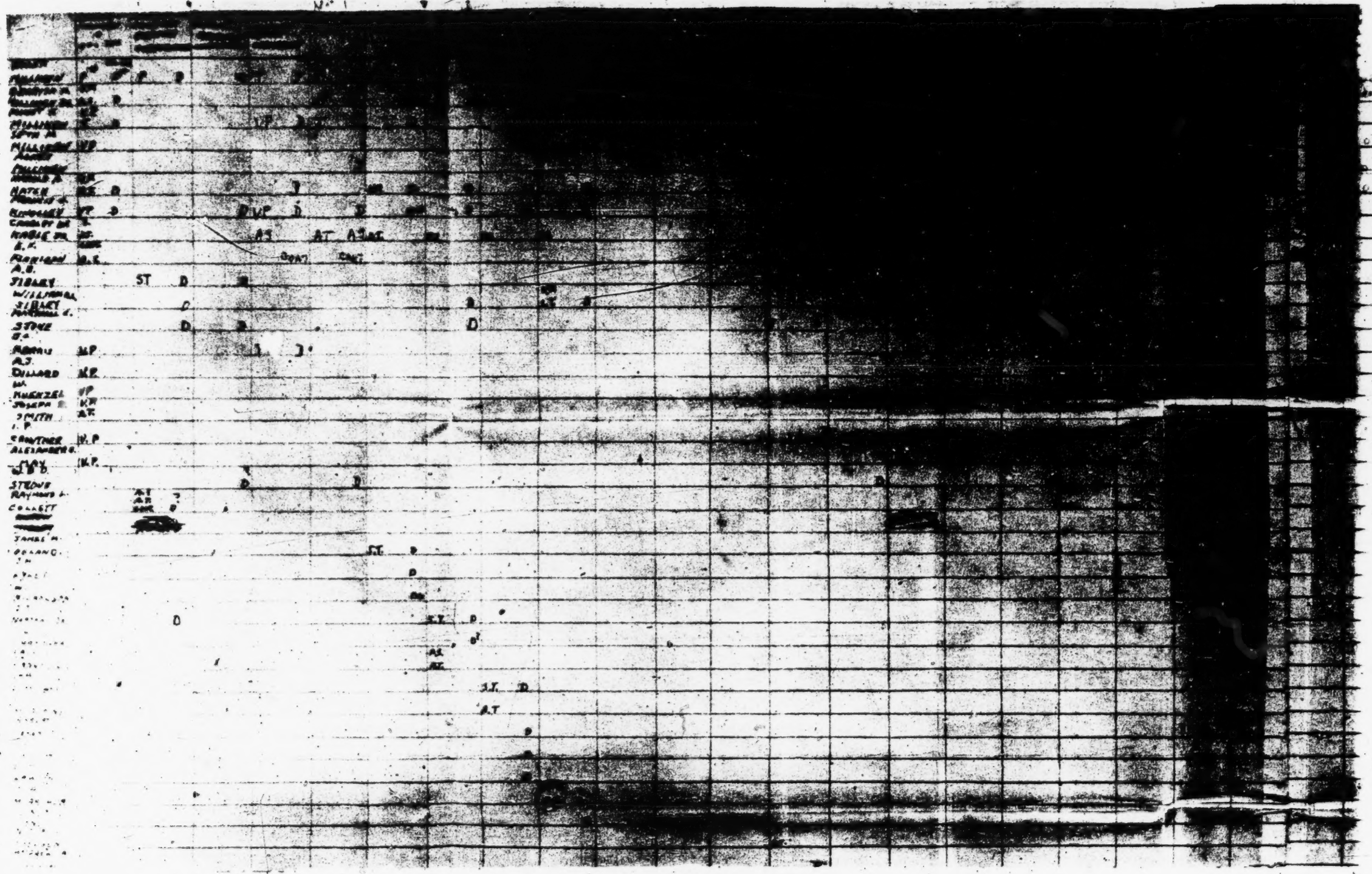


General Counsel Exhibit B-9C

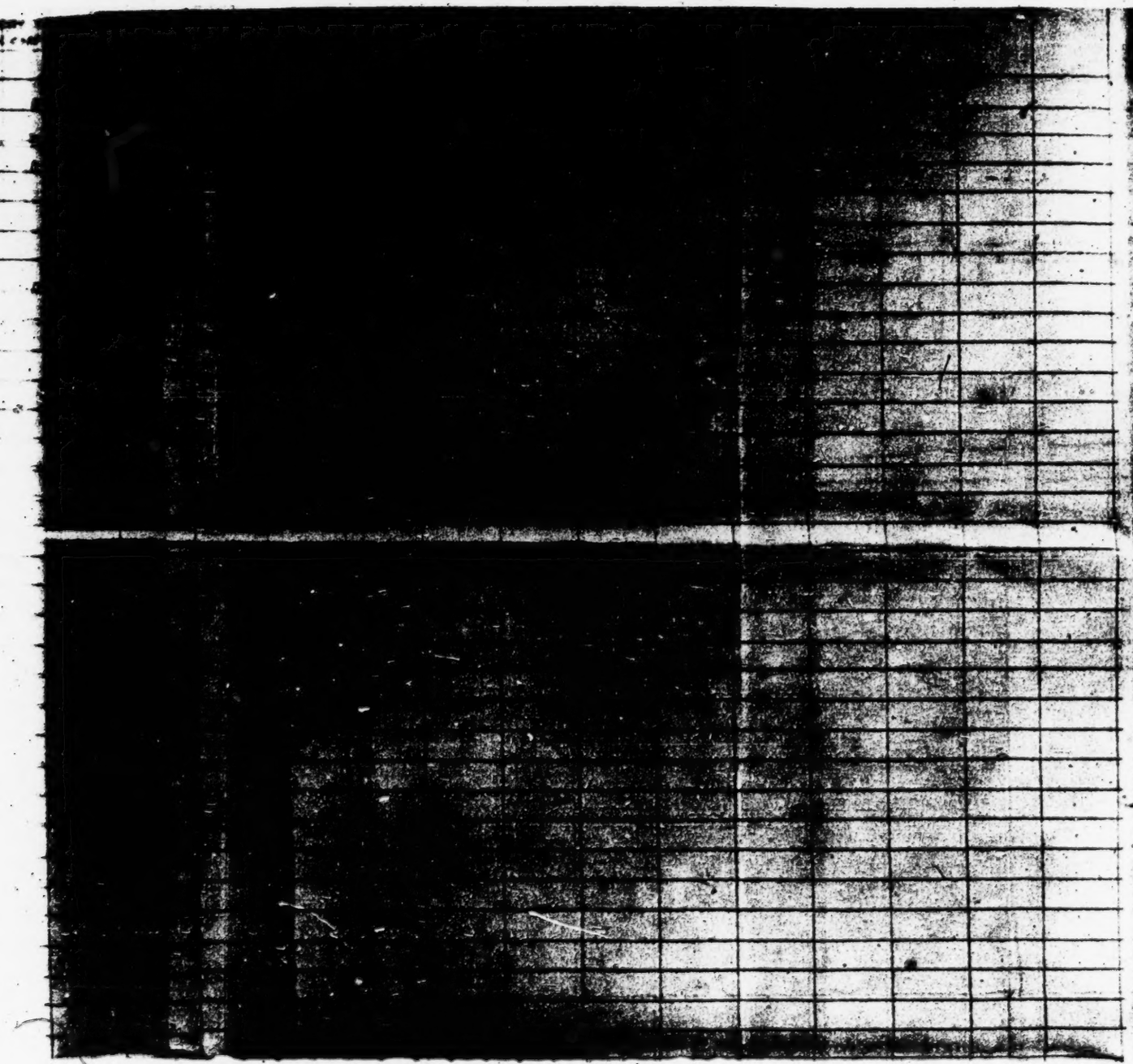


General Counsel Exhibit B-9D





General Counsel Exhibit B-10



NOTES

[illegible] The Cotwool Manufacturing Corporation operates three mill divisions: the Cogan Mills division at Lewiston, Maine, producing woolen fabrics; the Farnsworth Mill division at Lisbon Center, Maine, producing woolen fabrics; and the Judson Mills division at Greenville, South Carolina, which manufactures combed cotton, nylon, "Dacron," rayon and other synthetics. The Company also has twelve subsidiaries which include Machine Mill, Inc., Excelsior Mills, Inc., Abbeville Mills Corporation, Gayley Mill Corporation, Hitch Mill Corporation, Millihen Automotive Fabrics, Inc., Excelsior Merchandising Company, Kingstree Manufacturing Company, D.M. Trucking Company, and housing corporations.

[illegible] Mills, Inc., operates [illegible] Mills at [illegible], South Carolina, which manufactures paint and industrial cotton fabrics; Ottaway mill at [illegible], South Carolina, which manufactures corduroys, poplins, and [illegible] Lockhart mill at Lockhart, South Carolina, which manufactures [illegible] and diaper fabrics.

The Company has subsidiaries—the Jonesville Products Company at Jonesville, South Carolina, which cuts and sews diapers and crib sheets; the [illegible] and the Lockhart Power Company.

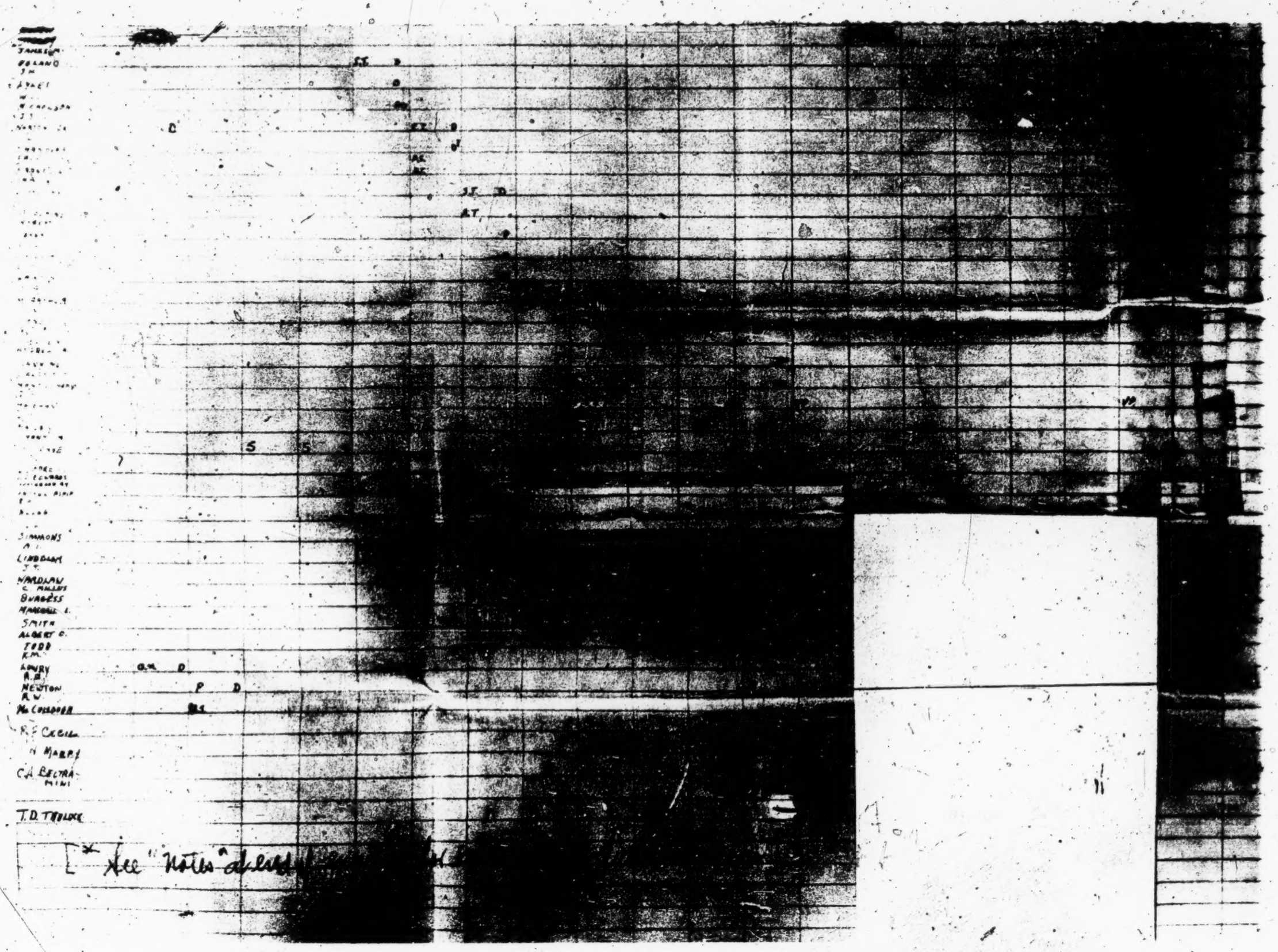
[illegible] Company operated plants at [illegible], South Carolina, [illegible], drills, and twills; a plant [illegible], which produces sheetings, drills, and twills; [illegible], which produces print cloth and industrial [illegible] Mill at [illegible], South Carolina, which [illegible] synthetic fabrics.

[illegible] Mills, Inc., operates a plant at [illegible], South Carolina, [illegible] fabrics; a plant at McCormick, South [illegible] worsted and synthetic yarns; a plant at [illegible], South Carolina, which weaves worsted and blended worsted [illegible], South Carolina, which manufactures and finishes [illegible], North Carolina, which manufactures [illegible] a plant at Clemson, South Carolina, which [illegible] for tire cord and industrial uses.

E. [illegible] Fabrics, Inc., was formerly Woven Plastics, Inc., and is a subsidiary of The Cotwool Manufacturing Corporation and produces [illegible] and other upholstery fabrics for the automobile trade.

F. Excelsior Merchandising Company, Inc., was formerly the Union Processing Company. Until 1954 the Company processed waste. Starting in 1955 it merchandised woolen, worsted, and synthetic fabrics to the jobbing trade and also to department stores for over-the-counter piece goods selling.

P.- President


SIMMONS
LINDBLOM
WARDLAW
C. MILLIS
BURGESS
SMITH
ALBERT O.
TODD
K.M.
LOWRY
R.B.
NEWTON
R.W.
McCULLOUGH
R.F. CECIL
H. MARRY
C.A. BECTRAMINI
T.D. THOLOCK
See "notes" above

[illegible] a [illegible] at Clemson, South Carolina, which [illegible] the tire cord and industrial uses.

[illegible] Inc., was formerly Woven Plastics, Inc., [illegible] Corporation and pro- [illegible] fabrics for the automobile trade.

7. [illegible] Merchandising Company, Inc., was formerly the Union Processing Company. Until 1954 the Company processed waste. Starting in 1955 it merchandised woolen, worsted, and synthetic fabrics to the jobbing trade and also to department stores for over-the-counter piece goods selling.

P - President
[illegible] - Vice President
[illegible]
[illegible]
S - Secretary
Comp. - Comptroller
A.T. - Assistant Treasurer
A.S. - Assistant Secretary
G.M. - General Manager
D - Director
Ch. Bd. - Chairman of the Board

1. [illegible] Millikan replaced Francis O. Kingsley as a Darlington Director September 12, 1956.

2. W. S. Nicholson is the former Treasurer of Darlington.

General Counsel Exhibit B-11

Date: June 27, 1956

To:

Mr. A. B. Sibley	Mr. L. J. Fisher, Jr.
Mr. J. M. Bailey	Mr. W. S. Manning
Mr. George Asnip	Mr. R. C. Owings
Mr. E. O. De Fore	Mr. W. E. Thrailkill
Mr. J. A. Meehan	Mr. M. G. Wallace
Mr. J. J. Norton, Jr.	Mr. A. J. Dillard
Mr. J. M. Oeland	Mr. J. C. Harris
Mr. I. S. Pitts, Jr.	Mr. M. K. Milliken
Mr. W. A. L. Sibley	Mr. R. B. Newton
Mr. G. G. Simmons	Mr. George Jolly
Mr. J. C. Stone	Mr. Eric Adler

FROM: W. R. Kuenzel

This is to advise that as of June 1, 1956 Mr. Victor Ross has joined the Fabric Development department of Deering, Milliken & Co., Inc. Mr. Ross will be our representative in Europe with headquarters at Milan, Italy. It will be his function to survey the European market with regard to new fabrics, new finishes, new manufacturing processes and any other developments in the line of textiles. He will supply us with samples of fabrics that are of particular interest to Deering Milliken and keep us abreast of fashion trends generally.

In order to carry out this function effectively, it will be necessary for Mr. Ross to be fully acquainted with all of the types of fabrics produced by our mills. To date, he has spent two weeks with Fabric Development covering greige goods sales and is presently working at the Uptown office covering woolens, worsteds and synthetic blends.

Mr. Ross is planning to spend a period of four weeks at several of our greige goods mills, woolen and worsted

mills, as well as Abbeville. It will be greatly appreciated if the respective mill managers will give their wholehearted cooperation in getting Mr. Ross fully acquainted with their various products and manufacturing facilities. They should also discuss with Mr. Ross their particular spheres of interest as guidance for his future activities.

Mr. Ross will spend another week in August in New York, at which time the various departmental managers, the yarn department as well as downtown greige goods sales, will have an opportunity to pinpoint their specific interests.

I hope that everyone will take full advantage of the services that Mr. Ross will render to Deering, Milliken.

WRK:MAT

General Counsel Exhibit B-12

[Letterhead of]

DEERING, MILLIKEN & CO., INC.

Date: November 22, 1955

To: Mr. J. M. Oeland, Darlington

From: C. M. Burchard

Subject:

How many of your employees know something of the size of MILLIKEN mills, the scope of fabrics that MILLIKEN produces, and the versatility of the MILLIKEN operation? We think that many of your people should have the Fabric Magic book which was printed about two years ago, but still is most interesting and emphasizes the size and influence of the MILLIKEN operation.

We have a supply of these books available in New York. They cost considerable to have printed, but in the interest of having these well distributed to more mill employees we would sell these to you at the very low price of 15¢ per copy. This charge is to help defray the expense of handling and shipping to you.

Will you advise me promptly the number of copies which you can use?

We are attaching hereto a copy of the Fabric Magic book for your perusal and ordering.

CMB:TA
Attachment

General Counsel's Exhibit B-13

FABRIC
MAGIC
by MILLIKEN

This is the story of Fabric Magic and of what makes it possible. It weaves a tale of textile adventure—of new fabrics created *first* by Milliken through the wizardry of science—of standard fabrics produced in thousandfold varieties—of mills magnificent even by modern measure—of the many millions spent to equip them, the up-to-date machinery to power them—of textile technicians highly proficient in their art.

Here is the magic of American textile pioneering and teamwork and know-how—and here is the evidence of a faith in the future, founded in the wisdom of nearly ninety years of progress in producing more quality in textiles of all types for more people.

Deering, Milliken & Co., Inc. . . . "quality-controlled textiles in quantity"

What is Fabric Magic?

It is Magic of Fiber-Blends Creating NEW Fabrics—Fabrics of the future with never-before usefulness . . . scientifically *engineered* by Milliken . . . created through chemistry . . . and miracle blends of wool and man-made fibers.

It is Magic of Versatility for Fabric VARIETY—No matter the need . . . how urgent, how unique . . . from fabrics for fabulous fashions to textiles for tough industrials . . . there's more to choose from, *with* quality, at Milliken.

General Counsel's Exhibit B-13

It is Magic of $78,000,000 Converted into New, Modern Equipment—More of the best in textiles of every type come from the most ***modern***, new and *newly-modernized* mills in all the world . . . the mills associated with Milliken.

It is Magic of RESEARCH in Fibers and Facilities—It's scientific selection, testing and utilization of newest fibers . . . latest machines . . . finest supplies. It's pioneering new inventions, new improvements . . . through chemical, electronic and mechanical ***research.***

It is Magic of Leadership in Progress and Quality—Leadership in *new* fabrics . . . in *variety* of fabrics . . . in finest fabric *facilities* . . . all in greater *quality* and *value.* Each marks a chapter in this story of Fabric Magic by Milliken.

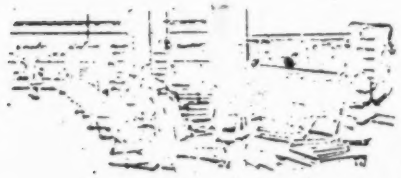
. . . and it all adds up to more of the best in fabrics of every kind . . . for use in the fields of FASHION, HOME, INDUSTRY and AGRICULTURE.

* * *

Have You a Fabric Problem? Here's Fabric Magic to Help You. With unrivalled textile facilities set up to process all fibers—whether worsted, wool, cotton, nylon or others made by man—*but* NOT committed to any, Milliken is in the ideal position of being able to assess, objectively, a fiber or blend on its individual merits. And then, using the best and most economical processes, the mills with Milliken are uniquely equipped to *engineer* new blends which have proved themselves best fitted for the required end uses.

* * *

Fabrics for Retailers *Direct-from-Milliken*



Make mine Milliken . . . people are saying when buying FIRST LADY sheets, pillowcases; diapers; sheeting.

Make mine Milliken . . . people are saying when buying MILIUM linings or blended or woolen piece goods in their favorite store.

"FIRST LADY" SHEETS PILLOWCASES, SHEETING

First Lady Sheets and Cases: lightweight muslin (type 128) heavy duty muslin (type 140).

Sold to: department stores, chain stores, mail order houses, jobbers, and hotel and linen supply houses.

Mills: Lockwood mill; Dutchess Bleachery.

MILLIKEN LABEL PIECE GOODS

Fabrics: all-wool *dress* crepes; flannel, worsted gabardine, rayon-wool, orlon-wool, dacron-wool suitings; plaid wools; nylon-wool flannel; and Milium linings.

Sold to: department stores, jobbers, chain stores and mail order houses.

Mills: Cowan, Farnsworth, Excelsior, Hatch, Johnston, Abbeville, Judson, Drayton.

BIRDSEYE AND GAUZE DIAPERS

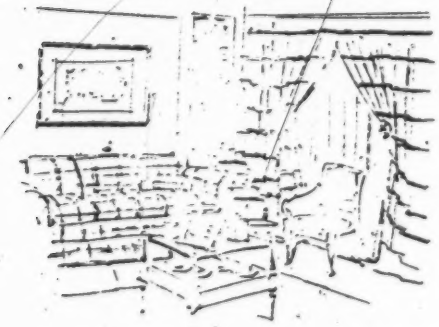
Birdseye Diapers: lightweight, medium weight, heavyweight.

Gauze Diapers: heavyweight.

Sold to: department stores, chain stores, wholesale jobbers and diaper services.

Mill: Jonesville Products Co.

Fabrics for Home Goods Manufacturing *from Milliken*



A wide variety of Milliken fabrics find their way into the *homes of America* . . . marquisettes for pretty curtains, and satins for the draperies, heavy cotton covers and laundry

DRAPERY, CASEMENT AND CURTAIN FABRICS

Drapery Fabrics: cotton, cotton-and-rayon boucles, satins, failles, rayon-and-linen, novelties, and Fiberglas. From Judson, Laurens, Drayton, Excelsior-Clemson, Pacolet.

Curtain Fabrics: rayon, nylon, orlon, Fiberglas marquisette, ninon —Judson, Gerrish Milliken Mills, Drayton.

Sold as: greige goods.

UPHOLSTERY AND AWNING FABRICS

Upholstery Fabrics: Saran plastic fabric, cotton, cotton-rayon boucle, rayon-and-linens, novelties . . . from Abbeville, Clemson.

Awning Fabrics: Orlon, heavy duty cotton drills and twills for durable awnings . . . from Pacolet mills, Judson.

Sold as: Saran, finished; others, greige.

TOWELING, BAGS AND COVER FABRICS

Towel Fabric: cotton drill.

Utility Bags Fabrics: laundry and shoe bag cotton drills.

Mattress and Furniture Covers: heavy cotton drills and twills.

All sold as: greige goods.

Mill: all from Pacolet mills.

SHOWER FABRICS

Shower Curtain Fabrics: versatile cotton print cloth, for plastic-coating and processing into shower curtains . . . from Gaffney and Lockwood-Dutchess mills.

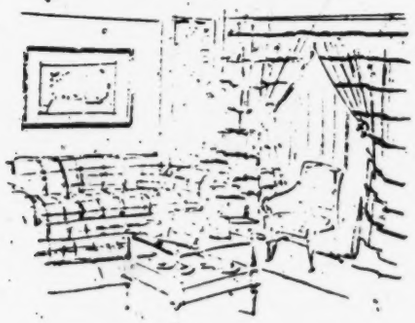
Sold as: greige goods.

WINDOW SHADE FABRICS

Window Shade Fabrics: special cotton shade cloths, basic fabrics in home window shades.

Mills: Gaffney, Lockwood-Dutchess, Monarch, Pacolet, Gainesville.

Goods Manufactured from Milliken



A wide variety of Milliken fabrics find their way into the *homes of America* . . . marquisettes for pretty curtains, and satins for the draperies—heavy cotton covers and laundry bags. Listed at right are just a few of them. Many available as greige goods, many finished!

and-rayon boucles, satins, failles, rayon-and-linen, novelties, and Fiberglas. From Judson, Laurens, Drayton, Excelsior-Clemson, Pacolet.

Curtain Fabrics: rayon, nylon, orlon, Fiberglas marquisette, ninon—Judson, Gerrish Milliken Mills, Drayton.

Sold as: greige goods.

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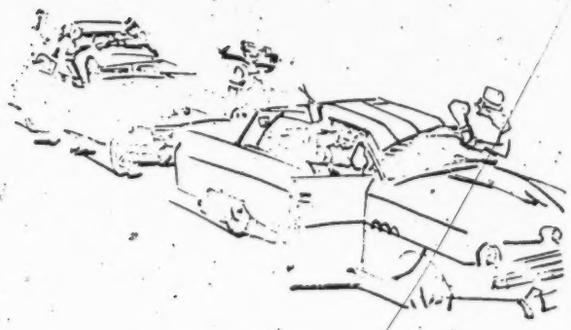
Mills: Gaffney, Lockwood-Dutchess, Monarch, Pacolet, Gainesville.

Sold as: greige goods.

Fabrics for Factory and Farm from Milliken



Textiles which form the basic material in many an industry's goods or tools . . . textiles which help farmers grow their crops and dairymen process their products . . . flow from the mills with Milliken to play vital roles in the American farm and factory scenes. Many are *greige* goods, many *finished.*

BASIC TEXTILES FOR LAMINATED PLASTICS

Fiberglas Cloth: for both high and low pressure laminates (tubing, boats, fishing rods, radomes, electric panels).

From: Judson mill.

Sold as: greige goods and finished.

Print Cloth; Sheeting: for reinforced and laminated plastics (table and desk tops, laminated gears).

All sold as: greige goods.

Mills: Monarch and Pacolet.

BASIC TEXTILES FOR THE RUBBER INDUSTRY

Precision Rayon Tire Cord: finest grade rayon tire cord obtainable. For use in auto and truck tires, industrial V-belts, garden hose, etc.

Fiberglas Cloth: radomes, flexible tubing and ducts, hot material conveyors.

Nylon Tire Cord: top grade—for use in making airplane tires.

Nylon Pontoon Oxford.

All sold as: greige goods.

Mills: both from Excelsior-Clemson.

FABRICS FOR USE IN AUTOMOBILES

Auto Seat Covers: Saran woven plastics, in many colors and patterns.

Sold as: finished goods.

Mill: Woven Plastics at Abbeville.

Convertible Auto Top Fabric: heavy duty weather-resistant Orlon.

Soundproofing: cotton sheeting.

All sold as: greige goods.

Mills: Pacolet, Lockwood, Abbeville, Judson.

Auto Floor Coverings: wide cotton drills used as base for imitation rugs.

BASIC TEXTILES FOR ELECTRIC INSULATION

Fiberglas and Cotton Print Cloth: insulation wrapping for electric cable, electric wire, electric equipment.

Sold as: greige goods.

Mills: Gaffney, Monarch, Lockwood-Dutchess.

BASIC TEXTILES USED IN HEAVY INDUSTRY

Cloth Backing: print cloth for abrasive papers, adhesive tapes, industrial hip-boots.

Sold as: greige goods.

Mills: Gaffney, Monarch, Gainesville.

Sold as: greige goods.

Mill: Pacolet.

FABRICS USED IN AGRICULTURE

Seed Bed Covers: versatile cotton print cloth.

Dairy Filters: print cloth.

Cheese Bandages and Tobacco Cloths: print cloth.

All sold as: greige goods.

Mills: Gaffney, Monarch.

PROGRESS is the magic word for the MILLS with Milliken

Progress . . . researched, planned, spirited progress . . . in every activity influencing the production of superior fabrics.

Personnel Progress . . . through the skills and interest of highest caliber men and women . . . whose own progress in their textile careers is made more secure by scientific training and by a firm *promote-from-within* policy.

Mill Progress . . . in number of mills, in specialized mills, in vast *new* mill construction, in plant and equipment modernization.

Fabric Progress . . . by just plain being ready and able to utilize to the fullest all the new and fabled fibers of the American chemical industry . . . by creating new, new fabrics for you . . . always putting quality first.

You Made Milliken and the Mills Grow . . .

But above all else, the nearly-ninety year progress of Milliken and the Mills rests in the best magic of all . . . the magic of *customer confidence* in the fine fabrics sold by Milliken. Your approval made the evidences of progress, pictographed below, the solid American-way facts that they are . . .

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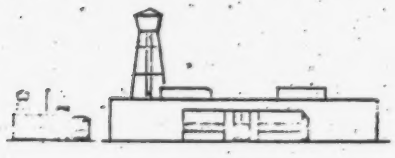
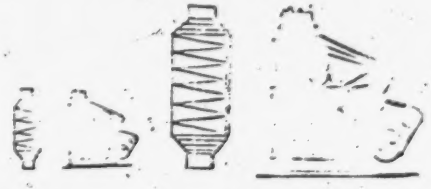
You Made the Mills Grow Like This



1865
1 mill

Now
29 mills

You Made Equipment Grow Like This



1865
2,400 spindles,
32 looms

Now
870,000 spindles,
20,300 looms

You Made Employee Rolls Grow Like This

1865
only 97
employees

Now
over 19,000
employees

You Made Annual Yardage Grow Like This

1865
less than
22.000 yards

Now
over 625,000,000
yards

Milliken pace-setting PROGRESS means

More of the Best in Fabrics of every kind . . .

General Counsel Exhibit B-13

No Greater Capacity for ... *Anywhere*

There Are Fabrics from Milliken for 'most Every Need...

...just a few examples of the variety of Milliken FASHION Fabrics

Fabrics that Make FASHION NEWS.

DRESS Fabrics from Milliken

FABRIC	MILL	SOLD AS
Sophista (100% virgin wool worsted)	Johnston	Finished
The 400 (100% wool and worsted)	Excelsior	Finished
Cadogan (60% wool, 40% rayon)	Cowan	Finished
Bemberg Crepes (rayon)	Judson	Greige
Nylon Butterfly (nylon)	Milliken	Greige
Mastersheer (acetate and rayon)	Judson	Greige
Cynara (acetate and rayon)	Milliken	Greige

SPORTSWEAR Fabrics from Milliken

FABRIC	MILL	SOLD AS
Lisboness (100% wool)	Farnsworth	Finished
Velvelyn (100% wool)	Excelsior	Finished
Lorette (55% orlon, 45% wool)	Excelsior	Finished
Cadogan (60% wool, 40% rayon)	Cowan	Finished
Featheron (85% wool, 15% nylon)	Excelsior	Finished
Birdseye Pique Cloth (combed cotton)	Drayton	Greige
Corduroy (corded)	Ottaray	Greige

Fabrics that Make FASHION NEWS

From practical and pretty-for-housedresses print cloth—produced in greige goods quantities so staggering as to make news for that fact alone—to fine-combed fissue gingham and dotted swiss fashion cottons—*you can get them all at Milliken.*

From fashion-news patterns and colors in worsteds, flannels, suedes, crepes and fleeces, of wool—to taffetas, satins, tricots and failles, of man-made fibers—to all kinds of blends, to Milium* metal-insulated rayon linings—*you can get them all at Milliken.*

New TRICOT Knit Fabrics

Making fashion news in the under-fashions field are the new Milliken TRICOT knit fabrics of *all-NYLON* and *all-ACETATE.* Specially equipped with ultra-modern Tricot warp knitting machines, the new Gayley mill specializes in these superior quality Tricot greige goods.

from Milliken

FABRIC	MILL	SOLD AS
Sophista (100% virgin wool worsted)	Johnston	Finished
The 400 (100% wool and worsted)	Excelsior	Finished
Cadogan (60% wool, 40% rayon)	Cowan	Finished
Bemberg Crepes (rayon)	Judson	Greige
Nylon Butterfly (nylon)	Milliken	Greige
Mastersheer (acetate and rayon)	Judson	Greige
Cynara (acetate and rayon)	Milliken	Greige

from Milliken

FABRIC	MILL	SOLD AS
Lisboness (100% wool)	Farnsworth	Finished
Velvelyn (100% wool)	Excelsior	Finished
Lorette (55% orlon, 45% wool)	Excelsior	Finished
Cadogan (60% wool, 40% rayon)	Cowan	Finished
Featheron (85% wool, 15% nylon)	Excelsior	Finished
Birdseye Pique Cloth (combed cotton)	Drayton	Greige
Corduroy (corded)	Ottaray	Greige

SUITINGS from Milliken

FABRIC	MILL	SOLD AS
Worsteray (80% rayon, 20% worsted)	Abbeville	Finished
Abbey Flannels (100% viscose and acetate)	Abbeville	Finished
Meriba Ribs (100% viscose and acetate)	Abbeville	Finished
Dovella (100% virgin wool worsted)	Johnston	Finished
Visa (55% dacron, 45% worsted)	Johnston	Finished
Parella (100% virgin wool worsted)	Johnston	Finished
Ribulay (100% virgin wool worsted)	Johnston	Finished

COATINGS from Milliken

FABRIC	MILL	SOLD AS
Lusterlain (89% wool, 11% nylon)	Farnsworth	Finished
Tunara Tweed (all wool)	Farnsworth	Finished
Waffelain (all wool)	Farnsworth	Finished
Cresenda (all wool)	Farnsworth	Finished
Karella (55% wool, 32½% vicara, 12½% nylon)	Farnsworth	Finished
Bellaine (all wool)	Farnsworth	Finished
Starella (all wool)	Farnsworth	Finished

LININGS from Milliken

FABRIC	MILL	SOLD AS
Milium* (process for metal insulating fabrics)	Excelsior Finishing	Commission Finished
Satins (acetate)	Judson, Drayton, Kingsley	Greige
Taffetas (acetate)	Judson, Drayton	Greige
Iridescents (rayon and acetate)	Drayton	Greige
Twills (rayon)	Drayton	Greige

*Trade Mark

LINGERIE and BLOUSE Fabrics from Milliken

FABRIC	MILL	SOLD AS
Satins (acetate)	Judson, Drayton, Kingsley	Greige
Nylons	Judson, Gerrish Milliken	Greige
Tricot (nylon, acetate)	Gayley	Greige
Lingerie Crepe, multifilament (acetate, rayon)	Judson, Gerrish Milliken	Greige
Combed Broadcloth	Hartsville	Greige & Finished

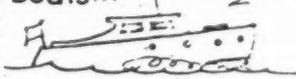
Fabric Variety

GREATER because Milliken leadership is outstanding in *variety of new fabrics* created by utilizing every variety of man-made and natural fibers.

GREATER because Milliken represents the widest *variety of modern mills* with the greatest variety of new machinery and textile skills in the world . . . producing a tremendous variety of standard fabrics and an outstanding variety of new fabrics . . . from *greige goods* for converters and industry to *finished goods* for manufacturers and retailers.

From FIBERGLAS MATERIALS
so ideal for curtains...

To TOUGH FIBERGLAS CLOTH
for laminated plastics in boats...



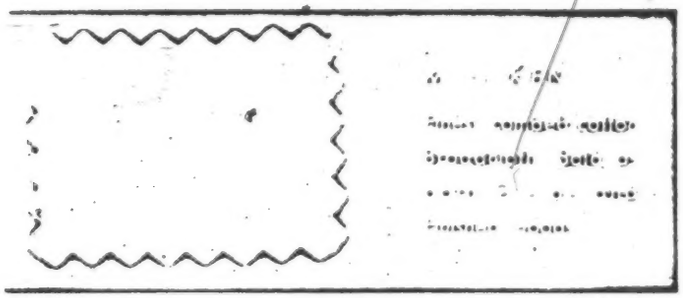
You can get them all...
and more... at MILLIKEN

from Fashion and Home Goods to Factory and Farm

. . . just a few examples of the variety of Milliken MENSWEAR Fabrics

Fabrics
That Make
the Clothes
That Make
the MAN

SHIRTING FABRICS from Milliken



Milliken Broadcloth Used in Famous Shirts

Devoted exclusively to the production of one fabric—the Hartsville mill is specially equipped and geared to produce the finest quality combed-cotton Broadcloth shirting ever laid on a cutting table. Only all-combed, rain-grown, beautiful grade of delta cotton—with minimum of neps—is used

SUITINGS, SLACK, UNIFORM Fabrics

FABRIC	MILL	SOLD AS
Year-Round Weights		
Gabardines (all worsted)	Johnston	Finished
Gabardine Sheens (worsted)	Johnston	Finished
Visa (55% dacron, 45% wool)	Johnston	Finished
Sharkskins (acetate)	Drayton	Greige
Gabardines (acetate-rayon for slacks)	Laurens	Greige
Tropical Weights		
Visa (55% dacron, 45% worsted)	Johnston	Finished
Military Uniform Fabrics		
U. S. Air Force Serge (18 oz. worsted)	Johnston	Finished
U. S. Army Serge (18 oz. worsted, nylon)	Johnston	Finished

WORK CLOTHES, UNIFORM Fabrics

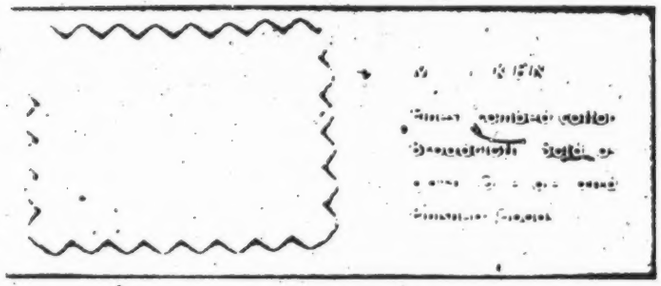
Fabrics That Make the Clothes That Make the MAN

From America's finest combed broadcloth ("Milliken") for famous-make shirts and fancy blends for sport shirts—to handsome worsted gabardines for topcoats—and smart worsted serge for Air Force uniforms . . . you can get them *all* at *Milliken*.

From miracle blends of Dacron-and-worsted for lightweight tropical suits to tough-fibered blends of heavy duty rayon-and-wool—and to sturdy cotton drills and twills for work clothes and industrial uniforms . . . you can get them *all* at *Milliken*.

Both greige goods for converters and finished goods for clothing manufacturers.

from Milliken



Milliken Broadcloth Used in Famous Shirts

Devoted exclusively to the production of one fabric—the Hartsville mill is specially equipped and geared to produce the finest quality combed-cotton Broadcloth shirting ever laid on a cutting table. Only all-combed, rain-grown, beautiful grade of delta cotton—with minimum of neps—is used. Only fabric passing unusually high tensile strength standards is approved. Result is finer quality, longer wearing, softer feeling, smoother, more lustrous broadcloth for use by leading converters and America's best known shirt manufacturers.

FABRIC	MILL	SOLD AS
Broadcloth (fine combed cotton)	Hartsville	Greige, Finished
Nylon	Judson, Gerrish Milliken	Greige
Dacron	Judson	Greige
Orlon	Judson	Greige

COATING Fabrics from Milliken

FABRIC	MILL	SOLD AS
Top Coatings		
Gabardine (all worsted sheen)	Johnston	Finished
Gabardine (rayon and nylon blend)	Laurens	Greige
Twills (rayon and acetate)	Laurens	Greige
Sport Coatings		
Lightweight Fancy (60% wool, 40% rayon)	Cowan	Finished
Fancy Blend (vicara, wool, nylon)	Farnsworth	Finished

FABRIC	MILL	SOLD AS
Year-Round Weights		
Gabardines (all worsted)	Johnston	Finished
Gabardine Sheens (worsted)	Johnston	Finished
Visa (55% dacron, 45% wool)	Johnston	Finished
Sharkskins (acetate)	Drayton	Greige
Gabardines (acetate-rayon for slacks)	Laurens	Greige
Tropical Weights		
Visa (55% dacron, 45% worsted)	Johnston	Finished
Military Uniform Fabrics		
U. S. Air Force Serge (18 oz. worsted)	Johnston	Finished
U. S. Army Serge (18 oz. worsted, nylon)	Johnston	Finished

WORK CLOTHES, UNIFORM Fabrics

FABRIC	MILL	SOLD AS
Heavy Service Fabric (80% rayon, 20% wool)	Abbeville	Finished
Overall Drill (heavy cotton)	Pacolet	Greige
Work Clothes Drill (heavy cotton)	Pacolet	Greige
Coverall Twill (heavy cotton)	Pacolet	Greige
Pocketing Drill (heavy cotton)	Pacolet	Greige
Poplin (combed cotton)	Drayton	Greige
Work Clothes Jeans (heavy cotton)	Pacolet	Greige
Work Clothes Moleskin (heavy cotton)	Pacolet	Greige
Uniform Gabardines (heavy cotton)	Ottaray	Greige

SPORT SHIRTING Fabrics from Milliken

FABRIC	MILL	SOLD AS
Gabardine, lightweight (rayon and acetate)	Laurens	Greige
Flannels (rayon and acetate)	Drayton	Greige
Fancy, blended (60% wool, 40% rayon)	Cowan	Finished
Corded Suiting (rayon, acetate, cotton)	Drayton	Greige
Stabilon (55% orlon, 45% wool)	Hatch	Finished
Rayon and Acetate	Abbeville	Finished
Gingham (combed cotton)	Drayton, Judson	Greige
Faille (rayon)	Drayton	Greige
Gabardine (corded cotton)	Ottaray	Greige

General Counsel Exhibit B-13

$78,000,000 in Expansion Since 1940 For the 29 New or Newly-Modernized Maine-to-Georgia Mills with Milliken

Invested in an idea . . . . 78 *million* magic American dollars. The idea? To solidly insure continued production of the finest quality in fabrics of every kind—and to produce *more* of them. The method? $56,000,000 of the expansion investment went into complete modernization of the equipment and facilities—and careful integration into a well-balanced group—of all the mills served by Milliken.

FROM THESE 29 MILLS COME MORE OF THE BEST IN TEXTILES

MILL	LOCATION
MAINE	
1 Cowan Mill	Lewiston, Me.
2 Farnsworth Mill	Lisbon Center, Me.
3 Lockwood Mill	Waterville, Me.
NEW YORK	
4 Dutchess Bleachery Plant of Lockwood Dutchess	Wappingers Falls, N. Y.
NORTH CAROLINA	
5 Excelsior Mills' Rutherfordton Mill	Rutherfordton, N. C.
6 Hatch Mill	Columbus, N. C.
SOUTH CAROLINA	
7 Abbeville Mills	Abbeville, S. C.
8 Darlington Mill	Darlington, S. C.
9 Drayton Mill	Spartanburg, S. C.
10 Excelsior Mills	Union, S. C.
11 Excelsior Mills' Clemson Plant	Clemson, S. C.
12 Excelsior Finishing Plant of Excelsior Mills	Pendleton, S. C.
13 Gaffney Mill	Gaffney, S. C.
14 Gayley Mill	Marietta, S. C.
15 Hartsville Cotton Mill	Hartsville, S. C.
16 Johnston Mill	Johnston, S. C.
17 Lockhart Power Plant	Lockhart, S. C.
18 Judson Mill	Greenville, S. C.
19 Laurens Mills	Laurens, S. C.
20 McCormick Mill	McCormick, S. C.
21 Monarch Mills Lockhart Plant	Union, S. C.
22 Monarch Plant of Monarch Mills	Union, S. C.
23 Monarch Mills' Ottaray Plant	Union, S. C.
24 Gerrish Milliken Mill	

FROM THESE 29 MILLS COME MORE OF THE BEST IN TEXTILES

MILL	LOCATION
MAINE	
1 Cowan Mill	Lewiston, Me.
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21 Monarch Mills Lockhart Plant	Union, S. C.
22 Monarch Plant of Monarch Mills	Union, S. C.
23 Monarch Mills' Ottaray Plant	Union, S. C.
24 Gerrish Milliken Mill	Pendleton, S. C.
25 Pacolet Mfg. Plant #3	Pacolet, S. C.
26 Pacolet Mfg. Plant #5	Pacolet, S. C.
GEORGIA	
27 Kingsley Mill	Thomson, Ga.
28 Pacolet Mfg. Gainesville Plant	Gainesville, Ga.
29 Pacolet Mfg. New Holland Plant	New Holland, Ga.

$22,000,000 Building Program for 10 New Mills During 10 Past Years Sets the Pace in Textile Progress

A *new mill a year* for ten years . . . *22 million* dollars, of the $78,000,000 expansion investment, built eight completely new mills, and two 75 per cent new. Exciting new man-made fibers—like Acrilan, Dacron, Dynel, Nylon, Orlon, Vicara—were setting new fabric horizons. And new mills with Milliken were specifically designed to blend and fashion these fibers into fabrics of the future.

10 NEW MILLS BUILT TO SPECIALIZE IN IMPORTANT-TO-YOU FABRICS

MILL	LOCATION	CHIEF FABRIC
1 McCormick Spinning Mill	McCormick, S. C.	worsted and blended yarns
2 Excelsior-Union Mill	Union, S. C.	wool-nylon dress goods, sportswear, woolen suitings
3 Pacolet-Gerrish Milliken Mill	Pendleton, S. C.	filament fabrics of nylon-orlon and other man-made fibers
4 Johnston Mill	Johnston, S. C.	fine worsted and dacron-worsted men's and women's fashion fabrics
5 Excelsior-Clemson Mill	Clemson, S. C.	rayon and nylon tire cords, belt cords; novelty rayon drapery fabrics
6 Hatch Mill	Columbus, N. C.	wool-orlon dress and suitings, and other man-made fiber blends
7 Kingsley Mill	Thomson, Ga.	filament rayon and acetate fabrics
8 Excelsior Finishing	Pendleton, S. C.	finishing woolens, worsteds and man-made fiber fabrics, Milium, glass fabrics, draperies
9 Gayley Mill	Marietta, S. C.	flat knit rayon and nylon tricot
10 Abbeville Mill	Abbeville, S. C.	Worsteray, woven plastics, all man-made spun fiber blends; and finishing

General Counsel Exhibit B-13

Milliken's own industrial engineers check all details of new mill plans

Daniels Construction Co. experts direct work on new Gayley mill

Modern efficient lighting and latest machinery in Hatch mill

Air-conditioned, windowless, climate controlled mill at Clemson

Turn back these flaps to see the Modern Mills with Milliken

MAGNIFICENTLY EQUIPPED

. . . over 870,000 spindles and 20,000 looms

1335
General Counsel Exhibit B-13

Cowan Mill, Lewiston, Maine
—Woolens

Lockwood Mill, Waterville, Maine
—FIRST LADY Sheets, Pillow Cases

Dutchess Bleachery, Wappingers Falls, N. Y.
—Bleachery

Rutherfordton Mill (Excelsior Mills)
Rutherfordton, N. C.
—Woolen Dress and Suitings

Darlington Mill, Darlington, S. C.
—Fancy carded cotton print cloths

Drayton Mill—Spartanburg, S. C.
—Combed Cotton, Rayon, Nylon

Cowan Mill, Lewiston, Maine
—Woolens

Lockwood Mill, Waterville, Maine
—FIRST LADY Sheets, Pillow Cases

Dutchess Bleachery, Wappingers Falls, N. Y.
—Bleachery

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—Fancy carded cotton print cloths

Drayton Mill—Spartanburg, S. C.
—Combed Cotton, Rayon, Nylon

Hartsville Cotton Mill—Hartsville, S. C.
—Combed Broadcloth

Lockhart Power Plant, Lockhart, S. C.
—Power Plant

Gaffney Mill—Gaffney, S. C.
—Print cloth; Carded Broadcloth

PRECISION PRODUCING

. . . over 12,000,000 yards of fabric weekly

Judson Mill, Greenville, S. C.
—Nylon, Dacron, Orlon, Rayon, Acetate Filament Fabrics

Laurens Mill, Laurens, S. C.
—Spun Rayon Fabrics, Draperies

Lockhart Plant (Monarch Mills), Union, S. C.
—Print Cloth, Birdseye, Gauze

Monarch Mill, Union, S. C.
—Carded Print Cloth, Broadcloth, Poplin

Ottaray Plant (Monarch Mills), Union, S. C.
—Cotton Gabardine, Corduroy, Pique

Plant #3 (Pacolet Mfg.), Pacolet, S. C.
—Drills, Twills, Moleskins, etc.

Monarch Mill, Union, S. C.
—Carded Print Cloth, Broadcloth, Poplin

Ottaray Plant (Monarch Mills), Union, S. C.
—Cotton Gabardine, Corduroy, Pique

Plant #3 (Pacolet Mfg.), Pacolet, S. C.
—Drills, Twills, Moleskins, etc.

Plant #5 (Pacolet Mfg.), Pacolet, S. C.
—Sheetings

Gainesville Plant (Pacolet Mfg.), Gainesville, Ga.
—Shade Cloth, Industrial Specialties

New Holland Plant (Pacolet Mfg.), New Holland, Ga.
—Drills, Twills, Sanforizing

General Counsel Exhibit B-13

Magic of Mill Integration assures control of Quality from fiber to fabric

Just as a big-league ball club is a team of specialists, each playing an important position and working with the others to control the play . . . so is the textile team with Milliken a group of specialist mills, each expert in some type or phase of textile production, and *closely integrated* to control—from start to finish—the properties, costs and quality of the fabrics they produce.

No matter whether it's cottons, woolens, blends, rayons or plastics—greige goods or finished goods—no outside process interrupts the fiber-to-fabric production and quality control by the integrated group of mills with Milliken.

Integrated Mill Teamwork Quality....Produces Fabrics Like "Visa"

Integrated Mill Teamwork Quality....Produces Fabrics Like "Visa"

Blending Fiber Staple and Spinning the Yarn

Milliken's miracle blend of Dacron and Wool starts at McCormick Mill (above) with the dyeing and blending of select Dacron staple and wool (see samples). Then this fiber-blend is spun into yarn.

Weaving the Greige Goods

The Dacron-Wool yarn from McCormick Mill next are trucked by the mills' own trucking company to Johnston Mill (above) for weaving into an unfinished lightweight worsted cloth (see sample).

Final Finishing of the Fabric

The worsted greige cloth from Johnston Mill is trucked to Excelsior Mills (above) for final shrinking, washing, dyeing and finishing into Visa—the finest tropical suiting in the world. (see sample).

General Counsel Exhibit B-13

Choosing Just the Right

Gives Fabrics

. . . *fabric quality starts*

With central cotton buying offices in the South, the magic of scientific cotton selection starts with laboratory grading of staple length and strength and fineness. In this way, quality is carefully checked and each cotton type is classed for use in fabric for which it is best suited.

Fibers

Just the Right Start

with scientific fiber selection

From COTTON SHEETING for chenille bedspreads...

To COTTON PRINT CLOTH for electric cable insulation...

You can get them all... and more... at MILLIKEN

Just as a really good chef knows exactly the kinds and amounts of foodstuffs to use in the meals he prepares...so do really good textile companies know just the kinds and qualities of cotton, wool and man-made fibers to buy for best possible performance. One centralized buying office for cotton, one for wool, one for synthetics—scientifically selects the fibers for all the mills with Milliken.

Wools from All the World's Markets
Selected to High Standards by Wool Office

for synthetics—scientifically selects the fibers for all the mills with Milliken.

Wools from All the World's Markets
Selected to High Standards by Wool Office

The Boston wool office has notified brokers in the United States, Australia, South Africa, and South America of the rigid Milliken standards specifying wool of specific type best for each type wool yarn and fabric.

All wool arriving at mills is checked against the standards sample for its type (as is being done above). Wool for use in worsted fabrics and yarns must meet particularly exacting standards set by Milliken experts.

Mills analyze wool deliveries for uniformity of fiber length and fineness, colored hairs, vegetable oils, and other quality factors. Often small amounts of yarn and small pieces of fabric are made up as final check.

Exciting New Fabrics Start with Selective Buying
By Milliken of All Types of New Man-Made Fibers

Mills with Milliken utilize great amounts of man-made fibers for new fabrics utilizing new properties in such fibers as Orlon, Dacron, Fiberglas. Many trials in dyeing and weaving are made to assure best performance.

To insure uniformity and Milliken top quality dyeing tests are made continually on each lot of man-made fibers. Mills dye and make up trial fabrics *every time* there is a dye-index change.

To make certain the man-made fiber which gives finest possible quality to fabric is used . . . the mills often run several samples of same fabric using different synthetic fibers . . . and test to select the best.

General Counsel Exhibit B-13

Only the Best through Research

From PLASTIC FABRICS
for colorful beach bags...

To PLASTIC UPHOLSTERY
for outdoor furniture...

You can get them all...
and more... at MILLIKEN

from a Finish fabulous.... to Machines miraculous

Research Gave America BARRIER Finish Repels Water, Resists Spots and Wrinkles

Only after exhaustive research development work did experts at the mills and Milliken Research Trust perfect BARRIER—acclaimed the finest of water-repellent and stain-resistant finishes for synthetic and blended fabrics. Given proper dry cleaning care, durable BARRIER affords this protection and enhances the feel of the fabric for the full life of style garments. Unlike others, BARRIER finish is not destroyed by *even* improper dry cleaning. It completely coats the fibers and protects them from even Cola drink and other food and liquid stains . . . just wipe off with damp cloth. Exclusive with Milliken BARRIER gives fabrics such resiliency they defy wrinkles . . . and it lengthens the life of the fabric.

Research-Trust Equipment Inventions Advance Progress of Milliken and Mills

Because the more efficient the mill machinery the *better the fabric quality* —Milliken and the mills support the independent division, Deering Milliken Research Trust. Its headquarters in Pendleton, S. C., house complete physics and electronics, chemical, and mechanical laboratories, manned by a group of experts in each field. Here the magic of science is always at work on improvements and radically new developments. New instruments and control methods constantly raise the high standards. New processes, dyeing techniques and machines are developed for creating better and better fabrics. The Research Trust Division, with many textile advancements to its credit, is an important factor in keeping Milliken in the forefront of the field.

With central cotton buying offices in the South, the magic of scientific cotton selection starts with laboratory grading of staple length and strength and fineness. In this way, quality is carefully checked and each cotton type is classed for use in fabric for which it is best suited.

Centralized Selective Cotton Buying

Sorts the Staple to Fit the Fabric

Under constant humidity and temperature conditions, technicians in buying laboratory check the fiber fineness, tensile strength, maturity, staple length uniformity, and other *physical* characteristics of raw cotton. Precision testing equipment helps insure best selection.

Besides physical analysis, there must also be careful *chemical analysis* of cotton to guard against buying cotton that has been damaged. Such cotton would cause flaws in finished fabrics and is rejected because it does not meet high Milliken standards. Sometimes a final check of the cotton to determine its performance under mill conditions is made by spinning and weaving it into fabric in the cotton-buying *pilot plant*. Even after cotton is purchased spot checks are made to rate its fabric quality.

Repels water, resists spots and wrinkles

Only after exhaustive research development work did experts at the mills and Milliken Research Trust perfect BARRIER—acclaimed the finest of water-repellent and stain-resistant finishes for synthetic and blended fabrics. Given proper dry cleaning care, durable BARRIER affords this protection and enhances the feel of the fabric for the full life of style garments. Unlike others, BARRIER finish is not destroyed by *even* improper dry cleaning. It completely coats the fibers and protects them from even Cola drink and other food and liquid stains . . . just wipe off with damp cloth. Exclusive-with-Milliken BARRIER gives fabrics such resiliency they defy wrinkles . . . and it lengthens the life of the fabric.

(Above) Even after dining table accidents like the one above, food stains on BARRIER-treated garments wipe right off with clean damp cloth . . . and cleaning costs are saved, too.

(Right) Let it rain, let it pour . . . when the raincoat is made of water-shedding BARRIER*-treated fabric the wearer stays dry in even heavy downpours . . . and wrinkles haven't a chance!

*Trade Mark Reg. U. S. Pat. Off.

Advance Progress of Milliken and Mills

Because the more efficient the mill machinery the *better the fabric quality* —Milliken and the mills support the independent division, Deering Milliken Research Trust. Its headquarters in Pendleton, S. C., house complete physics and electronics, chemical, and mechanical laboratories, manned by a group of experts in each field. Here the magic of science is always at work on improvements and radically new developments. New instruments and control methods constantly raise the high standards. New processes, dyeing techniques and machines are developed for creating better and better fabrics. The Research Trust Division, with many textile advancements to its credit, is an important factor in keeping Milliken in the forefront of the field.

(Above) Research Trust mechanical experts at pilot plant test new, much faster, patented circular rewinders they've developed.

(Left) Electronic device, invented by Research Trust and now licensed to prominent textile equipment manufacturer for industry distribution, stops warping operation for detection and quick repair of breaks in ends—improves quality.

(Left) Research Trust's new 2-for-1 twister spindle increases filament yarn twisting [illegible]e 3 times.

General Counsel Exhibit B-13

Then...1865

nearly 90 years ago the magic of Milliken all began like this

1865—Seth Milliken started the Deering, Milliken Company in Portland, Maine. It wholesaled yard goods and other items, and became the sales outlet for the Farnsworth woolen mill in Maine—the first mill with (and *still* with) Milliken.

1868—the company expanded its quarters in Portland, opened an office in Boston, and moved headquarters to the City of New York. Also about this time, William Deering left Deering, Milliken to establish the company known today as International Harvester.

1920—About 20 mills were now associated with Deering, Milliken when Seth Milliken left the great company to the presidency of his son, Gerrish Milliken. The next 27 years saw rapid growth—particularly in its associating with many cotton mills in the South.

1947—Roger Milliken became president of the company succeeding his father. Recent years have seen the building of 10 new mill affiliates, and modernization of the older mills. Many fabulous new fabrics have been created from man-made fibers and blends.

Through all this history the magic of a leadership dedicated to *more quality and progress in more textiles* has guided Milliken and the mills . . .

General Counsel Exhibit B-17

SPINDLE CHART MAILING LIST

Mr. George Asnip
Excelsior Mills Inc.
Worsted Division
Pendleton, South Carolina

Mr. J. M. Bailey
Judson Mills
Greenville, South Carolina

Mr. D. I. Beal (2)
Farnsworth Mill
Lisbon Center, Maine

Mr. S. J. Craig, Jr.
Hatch Mill Corporation
Columbus, North Carolina

Mr. E. O. DeFore
Excelsior Mills, Inc.
Clemson, South Carolina

Mr. A. J. Dillard, Jr.
Uptown Office

Mr. R. C. Edwards
Abbeville Mills Corporation
Abbeville, South Carolina

Mr. L. J. Fisher, Jr.
Gerrish Milliken Mill
Pendelton, South Carolina

Mr. W. F. Garth (3)
Pacolet Mfg. Company
Gainesville, Georgia

Mr. J. A. Meehan
Excelsior Mills, Inc.
Union, South Carolina

Mr. Roger Milliken
Spartanburg
South Carolina

Mr. J. J. Norton, Jr.
Gaffney Mfg. Company
Gaffney, South Carolina

Mr. J. M. Oeland
Darlington Mfg. Company
Darlington, South Carolina

Mr. I. S. Pitts, Jr.
The Hartsville Cotton Mill
Hartsville, South Carolina

Mr. Alan B. Sibley
Judson Mills
Greenville, South Carolina

Mr. W. A. L. Sibley (3)
Monarch Mills
Union, South Carolina

Mr. G. G. Simmons
Drayton Mills
Spartanburg, South Carolina

Mr. Marshall C. Stone (3)
Pacolet Mfg. Company
Pacolet, South Carolina

General Counsel Exhibit B-17

Mr. J. M. Jackson (3)
Pacolet Mfg. Company
New Holland, Georgia

Mr. F. A. Thompson (2)
McCormick Mill
McCormick, South Carolina

Mr. W. S. Manning
Gayley Mill Corporation
Marietta, South Carolina

Mr. W. E. Thrailkill
Kingsley Mill
Thomson, Georgia

Mr. Martin G. Wallace
Laurens Mill
Laurens, South Carolina

General Counsel Exhibit B-17

DEERING, MILLIKEN & CO. INC.

DATE: March 2, 1956

TO: See Attached List

FROM: E. F. Flanigan

SUBJECT: *Cotton Spindle Activity*

About a year ago you were furnished with a chart showing cotton spindle activity percentages for Deering, Milliken Mills and the industry for the years 1941 through 1954. You were also furnished with a frame for the chart. The chart has been expanded to include statistics for 1955, and it will be going forward to you in the next day or so.

Will you please arrange to have the old chart removed from the frame and the new one inserted when it arrives.

E. F. FLANIGAN

EFF:JS
Att.

General Counsel Exhibit B-19

DEERING, MILLIKEN & CO. INC.

DATE: October 13, 1955

TO: Mr. E. G. Allee
Mr. Fred Anthony
Mr. B. E. Burns
Mr. R. L. Collett
Mr. R. B. Dozier
Mr. P. C. Franklin
Mr. Cecil Gentry
Mr. H. W. Krackenberger
Mr. A. I. Lindblom
Mr. J. A. McArthur
Mr. N. O. Nielsen
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. E. A. Rice
Mr. J. C. Simmons
Mr. W. Fred Swann

FROM: E. F. Flanigan

SUBJECT: *Accounting Periods for Fiscal 1956*

Fiscal 1956 is going to be a 53-week year and a number of mills have written in to inquire how the periods should be set up. After some discussion of the subject, it was decided that the accounting year should consist of twelve 4-week periods and the thirteenth period should be a 5-week one. Accordingly, the accounting periods would be as follows:

Period	*Four Weeks Ended*
1	December 25, 1955
2	January 22, 1956
3	February 19, 1956
4	March 18, 1956
5	April 15, 1956
6	May 13, 1956
7	June 10, 1956
8	July 8, 1956
9	August 5, 1956
10	September 2, 1956
11	September 30, 1956
12	October 28, 1956
	Five Weeks Ended
13	December 2, 1956

EFF:JS

CC: Mr. G. C. Fechtmann
Mr. E. S. Hill

General Counsel Exhibit B-20

DEERING, MILLIKEN & CO. INC

DATE: October 11, 1956

TO: Mr. J. M. Oeland

FROM: E. F. Flanigan

SUBJECT: *Period Payrolls*

It is understood that it has been a general practice throughout the mills to have payroll periods correspond with accounting periods. This is a convenience in the accounting on payrolls, social security taxes and returns, etc. The extra week in fiscal 1956 may disrupt the practice unless a special procedure is adopted at the year end. In this connection, one group of the mills has decided upon a special procedure which is outlined below for your consideration as to the desirability of adopting a similar arrangement at your mills.

"As you are most likely aware, the fiscal year of our mills will end December 2, 1956. The 13th period will be a five week period ending December 2. This means that all employees who are paid on the period payroll each four weeks will, for the 13th period, be paid for the five weeks ending December 2.

This is being drawn to your attention so that you may advise all employees on your payroll that this will occur for the 13th period. I believe the information should be given this period to avoid any possibility of financial embarrassment for our employees in the 13th period.

In accordance with instructions given previously the period salary of employees whose compensation is stated

on an annual basis was determined by dividing the annual salary by 365 days and multiplying by 28 days. This is a more accurate method of computing the period salary than dividing the annual amount by 13. It is recommended that if you are not presently computing the period amount of annual salaries on this basis, that you change over effective December 3. No problem exists if salaries are stated on a weekly basis. Obviously employees will receive five weeks' pay if the salary amount is stated on a weekly basis. Those whose salary is stated on an annual basis will receive 35 days' pay.

It is suggested that all employees on the period payroll be contacted orally or in writing as soon as possible."

EFF:JS

General Counsel Exhibit 21

March 16, 1956

Mr. Minot K. Milliken
Deering Milliken & Co.,
New York, N. Y.

Dear Minot:

We have your letter of March 13th with the Vacation Plan of Pacolet Manufacturing Company which has been approved by the Treasury Department.

We, of course, would like to take advantage of any savings that might be made. We would like to have a little additional time to study with Pacolet's approval, and make some pencil notations where it differs from our present plan here at Darlington. We then would like to take the matter up and discuss with Mr. Kable on my next trip to New York in view of proposed changes we would like to make. I trust this will be satisfactory to you, but in the event we should promptly handle this matter we would be glad to have you so advise.

Very truly yours,

J. M. Oeland
Treasurer

jmo/m
cc: Mr. Roger Milliken

General Counsel Exhibit B-22

April 9, 1956

Mr. Bob Netters
Deering Milliken & Co.
New York, N. Y.

Dear Bob:

This is to confirm our conversation with regard to vacation pay plan.

It is my understanding that at our next directors' meeting you would advise our adopting the plan sent to us of Pacolet Manufacturing Company that has been approved by U. S. Treasury Department. This plan does not differ materially from our plan here and it is our opinion we could adopt it in full.

On the adoption of this plan at the directors' meeting it will then be put on the bulletin board as Darlington Manufacturing Company's vacation pay plan. This then will allow us to accrue in this accounting year a sufficient amount to cover the vacation year. Since the vacation year ends on December 31st and our accounting year about November 30th. We will not accrue for December.

It is my understanding in Darlington's case we have previously accrued and been allowed by the Treasury Department six months of the vacation year. If we get this plan adopted this year it will necessitate our accruing six additional months in this year amounting roughly to around $20,000, which will come out of this year's profits.

We will proceed as outlined in the matter as it is my understanding you recommend our doing it in view of the fact

that an agent might come into our plant at any time and change our present procedure unless this is in effect.

Very truly yours,

J. M. OELAND
Treasurer

jmc-m
cc: Mr. C. W. Kable, Jr.
Mr. Minot K. Milliken
Mr. Roger Milliken
Mr. C. L. Watford

General Counsel Exhibit B-25

DEERING, MILLIKEN & CO. INC.

DATE: June 18, 1956

TO: Mr. J. M. Oeland

FROM: E. F. Flanigan

Mr. Nielsen would like to see a salary expense category added to the salary classifications on the expense detail sheet of the financial statements. Attached hereto is a copy of his memo on the subject.

If you are in favor of adding this category in your mill, we would appreciate hearing from you.

[HANDWRITTEN]

Bill Hawkins: Do you have any suggestions. Return for reply. JMO

I believe that in breaking out this item of cost separately there would always be a question between mills as to whether the trainee was doing necessary work as purely trainee duties. In the case of Ind. Engr. trainees, they would learn by doing actual studies but this interpretation might be very broad and therefore reflect on the mills' Ind. Engr. cost unrealistically.

WSH

General Counsel Exhibit B-25

[LETTERHEAD OF]

PACOLET MANUFACTURING COMPANY,

Pacolet Mills, S. C.

Date: June 15, 1956

To: Mr. E. F. Flanigan

From: Nils O. Nielsen

Subject:

At practically all of the Deering Milliken mills at the present moment we have a category of employees that you might term "Supervisory Trainees." For the most part these are college graduates who work in the various departments in the mill. Sometimes they are actually working a specific job and are replacing an actual production employee. At other times they are in the mill as additional help and merely learning. At other times they work in the Industrial Engineering section. All of these employees are hourly paid employees.

At the present time I believe the accounting policy as far as what particular category of labor to charge them to varies drastically between mills. I think for the most part they are either buried in Industrial Engineering or charged to the department they happen to be working in at the time.

We would like to see a new category, preferably under the salary classification (even though they are not salaried employees) entitled "Supervisory Trainees." This could be typed in on our financial statements as there are a couple of blank lines at the end of that salaried category. We do not feel that we should go ahead with this, however, without

General Counsel Exhibit B-25

all mills being consistent, as we realize there are certain comparisons made between mills, including the photostatic comparisons that you make. We do think, however, that this figure has become significant enough to have it broken out on the financial statements. If the other mills agree, I would suggest a policy of charging these employees to the supervisory trainee account only when they are not actually replacing a production employee. If they are actually running a job in the mill, then they should be charged to the appropriate production job, but if they are merely learning in the mill and not replacing a job, or if they are working in Industrial Engineering on a training basis, then I think they should be charged to this new account.

I would appreciate it if you would give me your comments on this, and if you deem it advisable, then I guess the next step would be for you to check the various mills to see whether they are in agreement.

You might note that on our last two financial statements we did break supervisory trainees out in the salaried category, but this was done without my knowledge and we are reclassifying next period to eliminate this account. I am making this elimination merely for consistency between mills, but as stated above, we would like to see it broken out in the future.

Nils

General Counsel Exhibit B-26

June 22, 1956

Mr. E. F. Flanigan
Deering Milliken & Co.,
New York, N. Y.

Dear Mr. Flanigan:

We have discussed your letter of June 18th with copy attached of Mr. Nielson's letter of June 15th. We note that Mr. Nielson feels it would be well to show in a separate category supervisory trainees on our period statement.

We here at Darlington will be glad to cooperate in the majority's opinion of pulling out and showing separately the cost of this group. On the other hand, it is our opinion that we would rather leave it as it presently is and charge it to the department where the particular trainee is working. If we do not show the cost against the department the tendency is very often to consider this man as a trainee and not make him earn his way. As long as it is added up against the cost of the particular department and this cost is compared to a standard it has a good psychological affect. We further feel that our cost of industrial engineering should be realistic and not be a catch-all for an item of this nature.

The opinions we have given are, of course, our opinions. and again I would like to say that we will cooperate with the majority.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m
cc: Mr. W. S. Hawkins

General Counsel Exhibit B-27

DEERING, MILLIKEN & CO., INC.

DATE: October 28, 1954
TO: Mr. J. M. Oeland
FROM: A. L. Turnowski
SUBJECT:

In preparing authorization requests for additions to or replacements of parts of existing units, will you please note the remaining life of the unit to which the addition or replacement is to be applied.

This information will save our having to write you and also expedite the processing of the requests.

ALT:ph

(*Hand Written*)

Bill—

Will you prepare authorization for new * * * and second hand lathe. Thanks—

JMO

General Counsel Exhibit B-28

DEERING, MILLIKEN & CO. INC.

DATE: September 5, 1956
TO: Mill Office Managers
FROM: E. F. Flanigan
SUBJECT: *Merchandise Dispute Chargebacks*

Mr. Minot K. Milliken addressed a memorandum to mill treasurers and managers under date of July 27, 1956 which described a change in practice with respect to charge back to mills of billings which become the subject of merchandise disputes. The practice effective August 6, 1956 calls for charging back, as of the maturity date of a billing, items that involve merchandise disputes; with the provision that if the dispute is ultimately settled in favor of the mill, the item will be reinstated as of its original maturity date.

There is a question as to how the chargebacks should be handled in the mill accounts and the procedure adopted by the fine goods mills seems to be the procedure which should be followed throughout the Deering, Milliken group.

The handling in the New York office involves the following:

1. Request for credit memorandums prepared by credit department on billings involving merchandise disputes as the disputes become known to the department.

2. Credit memorandums prepared by billing department following receipt of approved requests therefor. Special handling applies to assure that no copy of credit goes to customer.

3. Credits go through current day's billings and reduce the net credit to current accounts of mills involved.

General Counsel Exhibit B-28

4. Sales statement in future will contain summary of credits and rebillings on merchandise dispute items to flag items for special handling in mill accounting.

5. Weekly listing of merchandise dispute items charged back to mills is prepared by accounts receivable department for credit manager, treasurer, etc. for follow-up on unsettled merchandise disputes. In other words, while the items are off DM's books, they are still subject to the same review and follow-up as are regular receivables.

The important thing in the New York office handling is to see that the procedure is simply a bookkeeping routine for getting dispute items off the books and charged back to the mills without the customer learning in any way that this step has been taken.

It seems that there should be caution exercised at the mills to see that settlements with customers are not jeopardized by the bookkeeping routine that has taken place. For example, if auditors desired to confirm outstanding amounts at the year end, it would seem that the confirmations should be handled as if the items were actually carried on DM's books—so, a special audit approach would seem to be required. We will review that point with Andersen (New York) before the year-end work is undertaken.

The mill accounting which has been decided upon by the fine goods mills involves the use of a special receivable account and a related valuation reserve. The DM charge-backs are charged to a receivable control "Accounts Receivable—Merchandise in Dispute" and based upon review with the mill manager, provision is made for the possible loss on the transaction in an account "Reserve for Possible

Loss on Accounts Receivable Merchandise in Dispute". For financial statement purposes the net of the two accounts are reflected as accounts receivable. This special procedure seems preferable to normal procedure under which DM chargebacks would be debited to sales or return sales and the goods taken back into inventory, since the transactions are still in process of settlement through arbitration, etc. with the customers and may be settled in favor of the mill or settled with a partial allowance to the customer, and it is recommended that all mills adopt this procedure.

The detailed procedures as outlined to the fine goods mills office managers were as follows:

1. There shall be added to the chart of accounts and set up on the general ledger, the following accounts:

   14.51—Accounts Receivable—merchandise in dispute.
   14.52—Reserve for possilbe loss on accounts receivable merchandise in dispute.

2. If a chargeback is made by Deering, Milliken under the policy stated above the amount of the chargeback shall be debited by way of the journal entry by which you journalize the DM current account, to account 14.51. You shall set up a work sheet in the permanent work papers in which there is full reference to such debit and shall enter on the permanent work sheet the pertinent detail in full, such as customer's name, credit number and date, yards, style, billing price, etc. of the invoices reversed by the credit. This work sheet shall be the detail supporting the control account 14.51.

3. You shall discuss with your manager the maximum loss which the mill could sustain if the arbitration or dispute

is settled in favor of the customer. There will be considered the liquidation value of the goods covered by the credit. An amount will be determined representing the difference between the amount set up in 14.51 and the mill's best estimate of the net realizable value of such goods and this amount shall be set up by journal entry as a debit to cloth sales and a credit to account 14.52.

4. For statement purposes there shall be listed as accounts receivable the net of accounts 14.51 and 14.52.

5. When the dispute is resolved Deering. Milliken will make the appropriate debit or credit entries through the account sales and this will enable you to clear out the corresponding item in account 14.51 and 14.52.

6. At the end of the fiscal year a review will be made of the net valuation at which the disputed items are carried and if so necessary, a further reserve will be set up in account 14.52.

EFF:JS

General Counsel Exhibit C-1

PRINT CLOTH
FOURTH & FIRST QUARTER

November 10, 1955

PRINT CLOTH				PRICE	MILL
36"	5.75	64x60		14¢	Lock.
38½"	5.35	64x60		15¢	Mon.
38½	6.25	60x48		12-7/8-sel.13-1/8¢	Gaines.
38½"	6.85	56x44		11-3/4¢	Gaines.
39"	4.00	80x80		20-1/4¢	Mon.
39"	4.00	80x80		20¢	Gaines.
39"	4.27	80x72		19¢	Mon.
39"	4.75	68x72		17¢	Lock.
40"	4.00	80x80		20-1/4¢	Mon.
40"	5.30	64x56		15-1/8¢	Mon.
40"	5.15	64x60		15-5/8¢	Mon.
WIDE GOODS					
45"	4.65	64x60		17¢	Mon.
45"	4.75	64x56		16-5/8¢	Mon.
45"	5.35	60x48		14-5/8	Mon.
43"	3.62	80x80		22-3/8¢	Gaff.
BROADCLOTH					
37"	4.10	100x58		19¢	Gaff.
37"	4.00	100x58		19-1/4¢	Gaff.
37"	3.85	112x60		~~20-1/2¢~~	Darl. 20 3/4
40"	3.70	100x58		20-1/2¢	Gaff.
40"	3.78	100x58		20-1/4¢	Gaff.
40"	3.33	109x58		22-3/4¢	Darl. ✓
40"	3.65	100x58		21-3/4¢	Gaff.
40"	4.55	80x56		16-5/8¢	Lock.
45"	3.29	100x58		23-1/4¢	Gaff.
46"	2.89	109x58		27-1/2¢	Gaff.
POPLINS					
37"	3.65	112x46		21-3/4¢	Darl. 21 1/4
*37"	2.80	112x46	S/D226	26¢	Darl.
*37"	2.80	112x46	218	26¢	Darl. ✓
37½"	3.90	99x44		18-3/4¢	Darl. ✓
40"	3.00	109x46		24-1/4¢	Darl. 24 1/4

These numbers will be sold on a contract basis only, with a minimum of a ten week run.

POPLIN'S CONT'D				PRICE	MILL
40"	2.70	86x42		26-1/2¢ 26 1/2	Darl.
*40"	2.60	112x46	S/D 226	28¢	Darl.
*40"	2.60	112x46	S/D 218	28¢	Darl.
*41"	2.55	112x46	S/D 218	28-3/4¢	Darl.
*41"	2.55	112x46	S/D 226	28-3/4¢	Darl.
44"	2.35	112x46		31-1/4¢	Mon.
45"	3.30	99x44		Do Not Quote	Gaff.
MISCELLANEOUS					
27"	3.37	68x72	tubing confined	29-1/2¢	Gaines.
30"	4.00	104x76)	Ticking	20¢	Gaines.
34½"	3.48	104x76)		23-1/2¢	Gaines.
38"	3.16	104x76	Ticking	25-1/2	Gaines.
39"	4.17	80x76		Do Not Quote	Mon.
*38"	3.20	116x84	Pique	26-1/2¢	Darl.
*39"	3.50	104x76	Narrow Wale Pique	23¢	Darl.
*40"	3.25	105x84	Waffle	26-1/2¢	Darl.
39"	4.00	80x80	Paj. Chk.	20-1/2¢	Lock.
39"	3.65	88x88	Paj. Chk.	22-1/2¢	Lock.
39"	4.20	80x48	Oxford	~~18-3/4¢~~ 18 1/2	Darl. ✓
39"	3.30	84x44	Oxford	22-3/4¢ ✓	Darl. ✓
40"	2.70	86x42		26-1/2¢ 26 1/2	Darl. ✓
40"	3.33	109x58	2x1 Twill	Do Not Quote	Darl.
41"	3.15	84x44	2x1 Oxford	~~24¢~~ 24 1/4	Darl.
47"	3.95	72x68		Do Not Quote	Lock.
48"	3.25	80x80		Do Not Quote	Gaff.
45"	4.03	72x68		Do Not Quote	Lock.
48"	4.12	64x56		22-1/2¢	Gaff.
48"	5.06	56x52		18-3/8¢	Gaff.
50½"	6.56	40x36		13-1/4¢	Gaff.
51"	4.70	60x48	18-1/2¢ reg.	18-3/4¢ sel.	Gaff.
51"	3.08	80x80		28-1/2¢	Gaff.
51"	6.47	40x36		13-1/2¢	Gaff.
55"	2.73	80x80		33-1/2¢	Mon.
58"	4.15	56x52	22¢ reg.	22-1/2¢ sel.	Mon.
81"	3.20	54x48		27¢	Gaff.
86"/87"	3.00	54x48		30¢	Gaff.

81" 3.35 52/48 25½

General Counsel Exhibit C-5

DATE: June 10, 1955

TO: All Salesmen.

FROM: A. J. May and A. A. Wright

SUBJECT: WEEKLY SALES MEETING—June 9th

The following is a resume of the subjects discussed at our Weekly Sales Meeting held on Thursday, June 9th:

* * *

4. Mr. May—We are going to be installing 251 new 46" looms at Monarch. There has been some discussion on the possibility of making a 46½" 64/104 and 64/80. We have an expression from Mr. Hahn that most people are buying it finished. However, it was brought out that Kenmill and Eddington Fabrics divion of Lowenstein, buy it in the griege. Mr. Shaw then stated Simpson were looking into this picture.

   Mr. May asked everyone to pass any information along they could obtain on this so we can figure the potential on this and see if it would be worthwhile making.

   Mr. May—Also the possibility of making 45" pocketing twills is under discussion. The general consensus of opinion is it would be a natural and there might be a good potential in a pro-rata to the 39" 4.25 68/76. Paul Stolberg is checking the market to be sure what the price would be and to see whether the pocketing twills, or filling sateens would be the most productive to the mill.

   We will then be able to advise the mill what to put on these looms.

General Counsel Exhibit C-5

5. Mr. Miller—All of the mill treasurers want it clearly understood that we should not use our Récheck information for selling customers on our quality as against competition. In other words, do not tell or show specific details on majors and minors in our goods as compared with theirs.

6. Mr. Wright—We have had inquiries from time to time on filling sateens, but Pacolet has not wanted to run them because the yarn numbers do not fit into their picture. However, in the future if you get any inquiries, please submit them to Mr. May as one of Print Cloth Mills, as mentioned above, may be interested in running them. We have run the warp sateens at Pacolet, but not the filling sateens.

General Counsel Exhibit C-6

DEERING, MILLIKEN & CO., INC.

DATE: December 13, 1955

TO: All Salesmen

FROM: A. A. Wright
A. J. May

SUBJECT: WEEKLY RESUME OF SALES MEETING

Herewith is a resume of the points covered in our Weekly Sales Meeting held on Monday, December 12th:

1. Gaffney Mfg. Company—R. Salmon

Our stock sheet last Friday showed 106,000 yards of 37" 4.00 100/58 broadcloth which we sold to Cranston Print Works at 19½¢. We had wanted a higher price, but the mill was anxious to work with Cranston on this sale.

We also lost an order from Stone Mfg. Company on 37" 4.00 100/58. They bought these goods at 19½¢ for first quarter, and 19¼¢ for second quarter, however, we were asking higher prices. We are not anxious for first quarter business, because of the blend situation but should you have any second quarter interest, please submit any bids, which are reasonable.

We would like to remind everyone of the stock of rayon and cotton blend of 37" 100/58. and 39" 4.00 80/80. Mr. Norton wrote to us calling our attention to the fact that if we do not get some additional cotton and rayon

business, he will have to cut back production which we certainly do not want to do.

* * *

3. Darlington Mfg. Company—Eliot Miller

The situation at Darlington is such that we are anxious to look at bids for fourth, first and second quarter. We have had a few inquiries on the 80/72 construction in various widths, and have obtained prices from Mr. Oeland as follows:

39" 4.27 80/72 — 19½¢
40" 4.16 80/72 — 20¢
37½" 4.45 80/72 — 19¢

We would like to make a decision as to whether we will put looms on the 80/72 construction or possibly the 80/80 sometime today. Please everyone contact all your customers who might have interest in this number.

General Counsel Exhibit C-7

March 6, 1956

Mr. J. M. Oeland—Darlington CC: Mr. A. J. May
Eliot Miller

LOOM & STOCK REPORT

We received your loom and stock report for the week ending March 3, 1956 yesterday, Monday, March 5th, and we find it to be a great help to have these the first day of the week and hope that we can continue to receive them in the first mail on Monday.

On this one just received, we notice that the last order received by you was on #7696 which was an order taken last Thursday. If it is possible for you to prepare these reports with information about sales through the end of business on Thursday without extra expense to you by having people work on Saturday who would not normally work, everything would be fine. However, if you have to have someone work on Saturday in order to do this, perhaps it would be better if we sent you information by teletype Thursday evening. We suggest that we could do the following to try to give you complete information so that you will be sure to have the information in time to give us the loom and stock report by Monday morning.

* * *

Unless we hear from you to the contrary, we will begin this teletype on Thursday March 8th. We trust this will work out satisfactorily to our mutual benefit and if you have any suggestions as to some other way to accomplish this to insure the Monday receipt of your report, we will appreciate it.

EM/am

P.S. The above system is working very satisfactorily with Monarch, Lockhart, Ottaray and Gainesville.

General Counsel Exhibit C-9

November 30, 1955

CC: Mr. A. J. May

Mr. J. M. Oeland, Darlington

Eliot Miller

81" 3.35 52x48

You have contracts with deliveries starting in January and running through June for two customers on the 81" 3.35 52x48.

As you know, Gaffney has been making an 81" cloth for some time and I thought it might be well for you to know that they have had some trouble with the cloth splitting, during finishing, in the middle of the cloth at the place where the warp ends make a heavy place in the middle of the cloth.

Before starting to run this cloth, which I think you have scheduled for late December, it might be well for you to talk with Mr. Norton and Mr. Rankin at Gaffney to determine what their problem has been in weaving this cloth which might save you some headaches when you start running it.

ELIOT MILLER

EM/pp

General Counsel Exhibit C-12

September 7, 1955
Mr. J. M. Oeland
A. J. May

This acknowledges receipt of your letter of August 31st. wherein you may recommend purchasing from Lockwood—28 Draper automatic 54" model X-2 looms and 56 48" looms of the same model. In my opinion of the two widths I would only consider the 58 48" looms, although 46" would be preferred.

Having these wider looms no doubt would make you more versatile, provided you have sufficient spinning to take care of these additional looms and that you are able to obtain them at a good price.

At present, there are three fabrics currently run at Darlington on 40" looms that are being woven in wider widths on 46" looms at Gaffney and Monarch Mills.

28 looms 45" 3.30 99x44 Poplin—Gaffney
40 Looms 46" 2.89 109x58 Broadcloth—Gaffney
100 looms 44" 2.35 112x46 Poplin—Monarch

Of these fabrics the 112x46 Poplin (Rib) at 31¢ per yard might fit into your picture provided sales could be made for 1st quarter delivery to the extent of 56 looms over and above the 100 looms now on at Monarch—please check with Mr. Sibley. As to the 46" 2.89 109x58 we still have, 4th quarter production, unsold.

Mr. Clausen is also checking on both the 54" and 48" widths for industrial end use.

AJM:BS
cc: Mr. R. Salmon
Mr, Clausen
File ✓

General Counsel Exhibit C-13

DEERING, MILLIKEN & CO., INC.

DATE: April 3, 1956

TO: Messrs. J. J. Norton, Jr.—Gaffney
J. M. Oeland—Darlington
W. A. L. Sibley—Monarch
M. C. Stone—Pacolet

FROM: A. J. May

SUBJECT: TAR SPOTS

Mr. Shotwell is negotiating at present with M. Lowenstein & Sons on a complaint covering approximately 52,000 yards of Monarch 39" 4.00 80/80 containing tar spots, at Yates Finishing Plant for plain shades. The customer has requested 1¼¢ per yard credit, which they claim is the usual rebate for refinishing these goods. We do not want to establish a precedent by issuing a credit for tar spots, but we hope to settle this claim by giving an allowance on the basis of classifying the goods as seconds.

* * *

It is possible that this tar spot situation might get worse, and that Deering Milliken could effect a tremendous loss, especially if there is a decline in the market. So it is most important that we come to some understanding, and if possible, establish a policy.

We would appreciate your comments on the above.

AJM:GM
copies: Mr. Roger Milliken
Mr. Winston Garth — Gainesville
Mr. J. T. Shotwell
Mr. T. D. Truluck — Cotton Dept., Monarch Mill

General Counsel Exhibit C-14

DEERING, MILLIKEN & CO., INC.

DATE: August 1 1956
TO: Mr. J. M. Oeland—Darlington
FROM: A. J. May
SUBJECT:

* * *

Mr. Manes also informed us that he is actively working on standard 39" 4.00 80/80 in his Tex-Trends Division, and the goods are finished at Hartsville.

With our large production on 109 warps, and with the whims and demands of the market, it occurs to me that we should seriously consider having a block of looms on 80/80 so that Deering Milliken can sell a standard make 80/80 along with Monarch 80/80, which we are endeavoring to put in the premium class and ask comensurate prices.

Please advise.

A. J. MAY

AJM:GM
cc: Mr. Eliot Miller
Mr. R. V. Moore

General Counsel Exhibit C-15

BULLETIN

DATE: December 28, 1954

TO: All Salesmen

FROM: A. A. Wright
A. J. Dillard, Jr.

SUBJECT: *Mill Trips*

We are working on a program for the salesmen visiting our mills with customers, whereby the customer will get little better information and will be more impressed with his visit to our mills than he has in times past. Heretofore, we have hurried them through the mills, and made more or less of a social affair out of it.

We now intend to set up space whereby we will have greige goods and finished goods from all of our cotton mills. We might also possibly have samples finished and greige from our synthetic mills. We will then have the customer sit down in a round table and have a discussion with our mill men and certain technical men. We will bring out in this talk, the quality we are making in each mill etc.

We are attaching herewith a letter to Mr. Sibley dated December 6th from Mr. Harry Defore. You will note from this letter that the mill, and Mr. Defore will require certain information regarding each customer prior to his visit to our plants.

Also from Mr. Defore's letter you will note that the customer, during the discussion at the round table, will have an opportunity to make statements regarding certain qualities, etc.

General Counsel Exhibit C-15

We believe in proceeding in this manner with the customer, he will get a great deal more from his trip to the mill than he has in the past.

If anyone of you has any suggestions regarding such an arrangement that would be helpful, or different to what is already outlined, we would appreciate hearing from you at once. We would like to get this into operation as soon as possible.

GM

General Counsel Exhibit C-16

COPY

COTTON DEPARTMENT

DEERING MILLIKEN SERVICE CORPORATION
Union, S. C.

DATE: December 6, 1954

TO: Mr. W. A. L. Sibley

FROM: Harry Defore

SUBJECT: Proposed Program for Customer Visits

After reading the memorandum from Mr. Dillard to Mr. Milliken dated 11/18/54 and the one from Mr. Milliken to you dated 11/29/54, I offer the following as a starting point for such a program. We would appreciate suggestions for additions, deletions or modifications.

1. —Information from Sales prior to the visit if possible but from the accompanying salesman if not possible.

   a—Name of customer and firm represented

   b—Nature of customer's end uses

   c—Constructions purchased by customer and other constructions in which we are trying to interest him.

   d—Special features that Sales is trying to sell this customer such as wider widths, etc.

   e—Nature of customer

      1—Price or quality buyer

      2—Previous complaints if any

General Counsel Exhibit C-16

2. —Statement by customer as to:

a—The three leading makes of his constructions and why

b—His opinion of our quality and why

c—Actual ranking of several competitive qualities of fabrics

d—The influence of the following on his opinion of quality and his preference in buying:

1—Grey goods color

2—Grey goods leaf

3—Neps or dead fiber

4—Dyeing characteristics—ease of

5—Cover

6—Yarn Uniformity

7—Slubs and gouts

8—Thick and thin places

9—Broken picks and ends out

10—Flats and wrong draws

11—Physical properties

a—Strength

b—Tearing resistance

c—Thickness or guage

d—Selvage width

12—Packaging

General Counsel Exhibit C-16

3 —Aerial views Deering Milliken-Mills

4 —Display finished and grey goods (any other than cotton?)

5 —Our program for quality maintenance and improvement

a—Raw materials selection

b—Pilot Plant and processing research

c—Machinery research and product development

d—Manufacturing

1—Personnel selection

2—Personnel training

3—Machinery purchasing

4—Machinery maintenance and inspection

5—Quality Control

6—Point System of grading

7—Re-check department

6 —Comparison of Re-Check results ours vs. competition on constructions of interest to customer.

7 —Offer of liaison between D. M. and customer staff departments to improve competitive position of both.

8 —Questions, comments or suggestions from customer.

HLD/mn

General Counsel Exhibit C-17

DEERING, MILLIKEN & CO., INC.

DATE: January 27, 1955

TO: Mr. J. M. Oeland—Darlington Mfg. Co.

FROM: A. J. Dillard, Jr.

SUBJECT:

As you know we plan to set up a room at Monarch to display finished and greige goods from various Deering, Milliken Mills. Recently Stein-Tex returned to you about 2,000 yards of finished 40" 3.33 109x58. Do you think there is a possibility of getting enough yardage out of this that would look good.

We hesitate doing this, but if you feel you can get a piece about five feet long we will not bother to get finished samples right now.

JEFF

AJD:em

General Counsel Exhibit C-18

August 21, 1956

Mr. J. M. Oeland—Darlington

A. J. May

Please be advised, we are planning to revise our Annual Sales Meeting this year. In its stead, we plan to have a meeting consisting of mill managers, and the New York mill merchandisers, together with appropriate salesmen. These meetings will begin on Tuesday, September 25th thru the 27th.

We have specifically assigned Darlington Mfg. Company to Wednesday, September 26th, in the morning. We would appreciate your advice as to whom from your mill you would like to attend with you on this date. (10:00 a.m.)

AJM:GM
cc: Mr. J. C. Harris
Mr. E. E. Miller
Mr. J. T. Shotwell (Quality
Mr. Billy Davis (Control

Respondent Exhibit C-1

August 6, 1956

Mr. A. J. May
Deering Milliken & Company
New York, N. Y.

Dear Al:

I note the reference in two recent letters to your recommendation that we consider putting more looms on 80 sq. as several customers have mentioned the fact that our freight rate as far as the Hartsville Finishing plant is concerned will have advantages to them.

We have discussed previously with you the fact we cannot put additional looms on a slow pick style without throwing us very much out of balance. We are presently out of balance and all departments other than the weaving have experienced some short time the last several weeks. From a manufacturer's point of view this is a bad set-up as one finds invariably supervision will not send out help when they should, and thus it increases our costs. The best way to get the most out of any plant is to keep it balanced and all departments running full time.

We are waiting for the installation of our 50" looms and the styling up of these looms. We will feel very relieved when we can line up the sale of production from some of these looms. The style that they are put on will materially affect the balance in our plant. You remember that we discussed at one time the possibility of Cone purchasing our 108x52 poplins. This construction carries 12's filling with a fast pick and uses up poundage of

Respondentn Exhibit C-1

filling very rapidly. On the other hand, if the looms were styled on an 80 sq. yd. we would necessarily have to buy additional filling spindles and change our balance in the spinning room.

We have discussed with you the other problem we have of going on the 39" 4.00 80 sq., and that is the profit angle. I have suggested to our production and technical superintendents that they plan a program for putting on the 360 X model looms that we have in the plant running at 182 p/p/m this style or one similar to the one we are presently running for Lowell. We would take out all of the direct labor that we feel that we can and see if we will have a better profit picture with the entire room on this style.

We have discussed this matter on previous occasions along the same lines. Since you have brought it out in two of your previous letters I though it might be well to bring out the facts again and let you know our plans. We hope that it will not be too far off before plans can be made to style up our 50" looms and get them in production. The looms have been delivered, the contracted for material is here, and we still plan to have them in production in October.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m
cc: Mr. Eliot Miller
Mr. J. C. Harris
Mr. W. A. Goodwin

General Counsel Exhibit D-3

DEERING, MILLIKEN & CO., INC.

DATE: February 8, 1955

TO: Mr. J. M. Oeland

FROM: C. W. Kable, Jr.

SUBJECT: Corrected suggested draft of resolution re: Vacation Pay Plan

Enclosed is a copy of the final draft of a resolution which we think will be helpful in enabling all mills to set up proper accruals for vacation pay. There is just one final point that I should like to discuss with you before you make this a part of your final drafting of minutes for the annual meeting. Some of our mills have in the past taken administrative and executive personnel into account in making vacation pay accruals. Others have not done this, but have only accrued vacation pay with respect to mill employees. Of course, we want to get the maximum accrual possible. However, if your original vacation pay plan did not stipulate that you were to take administrative and executive employees into account, and you have since changed the wording, would have to be amended to take that factor into account.

If there is any such aspect to your problem, please do not hesitate to contact me again about this. Thanks.

CHARLEY

CWK:ARM
Enclosure

DRAFT OF RESOLUTION

VACATION PAY PLAN

RESOLVED, that the vacation pay plan of the corporation authorized originally by the Directors on Jan. 16-1945 and amended Jan. 23-1946 is approved for the Plan Year ending March 31, 1955.

FURTHER RESOLVED, that for subsequent Plan years, such vacation Pay Plan of the Corporation is amended to change the eligibility date from March 31 to the preceding December 31. Earnings used as the basis for calculation of vacation pay shall be those reported to the Federal Government for the calendar year, less vacation pay included therein.

General Counsel Exhibit D-4

April 18, 1955

Mr. C. W. Kable, Jr.,
Deering Milliken & Co.,
New York, N. Y.

Dear Charlie:

You will find enclosed the revised minutes of the meetings of the directors and stockholders held on January 24th. As suggested by Bob Netter we would appreciate your going over these and making any further corrections you advise, and return to us for final draft to be put in our minute book.

In your letter you raised the question as to whether we included administrative and executive personnel in making our vacation pay accruals. This has not been done here and we are only charging to the accrual we make the vacation pay of wage employees; all salaried employees receive their vacation and are paid at the time they are away from work, which is not true of the wage employees.

Very truly yours,

J. M. OELAND,
Treasurer

jmo-m

General Counsel Exhibit D-5

240 CHURCH STREET
NEW YORK 13, N. Y.

May 2, 1955

Mr. J. M. Oeland
Darlington Mfg. Co.
Darlington, S. C.

Dear Jim:

Please excuse my failure to answer yours of April 18 at an earlier date. The following are my observations regarding it, as well as the minutes of the directors' and stockholder' meetings which were held in January:

Regarding administrative and executive personnel which might be included in the vacation pay accrual, this idea has in my opinion been badly crimped by the Treasury Department's insistance that the entire reserve for estimated expenses sections be retroactively deleted from the Internal Revenue Code. Therefore, for the present, I cannot recommend any change in your method of calculating and accruing your vacation payroll.

As to the minutes, they do not appear to include an election of directors. This may be perfectly all right under the by-laws, if they provide that directors continue in office until their successors are named by the stockholders. Another point in connection with the minutes' refers to the lack of any reference to the incentive compensation contracts, which I think should be approved by the stockholders at least.

General Counsel Exhibit D-5

Otherwise, these minutes appear to include everything we can think of which should be taken into account at the annual meetings.

I am returning the copies of the minutes herewith so that necessary elections and additions, if necessary, may be made.

Kindest regards,
CHARLEY
C. W. Kable, Jr.

CWK:ARM

General Counsel's Exhibit D-9

January 31, 1956

Mr. C. W. Kable, Jr.,
Deering Milliken & Co.,
New York, N. Y.

Dear Charlie:

We appreciate very much your letter outlining some suggested changes in the minutes of our directors' and stockholders' meetings held January 17. You will find enclosed copies of these minutes with the alterations suggested. We will appreciate a letter from you as to whether you approve of the new draft.

I have deleted from the minutes the question of Mr. Truluck's incentive bonus. This was put in at the suggestion of Mr. Milliken. Perhaps he did not realize that the bonus in question was paid through the D. M. Service Corporation. You, perhaps, are getting copies of minutes of other D. M. mills, and should you feel after reading theirs that we should cover this incentive bonus in our minutes we can make corrections according to your suggestion.

Very truly yours,

J. M. Oeland
Treasurer

jmo—m

General Counsel Exhibit D-10

DEERING, MILLIKEN & CO., INC.

DATE: July 31, 1956

TO: Mr. J. M. Oeland

FROM: C. W. Kable, Jr.

SUBJECT: Darlington Manufacturing Company
Deering, Milliken Mills Retirement Plan

Following a meeting of the Pension Committee of the Deering, Milliken Retirement Plan recently, an amendment to the Retirement Plan was recommended by the Pension Committee to the Boards of Directors of all participating corporations. The amendment concerns two specific items.

First, it provides a third option, or election, which may be exercised during the calendar year immediately preceding the retirement of each participant of the Retirement Plan whereby he may, if he wishes, receive only interest on the total actuarial fund (the company's contribution and his) which has accumulated for his benefit up to age 65. During his lifetime, the interest only on such fund will be paid over to him and charged to him as taxable interest. After his death, his specific beneficiaries may receive this fund without the imposition of estate tax (except to the extent to which the participant has made contributions). His beneficiaries will be required to pay only a 25% capital gains tax with respect to the monies paid over to them by the trustee after participant's death. This tax applies only to the portion of the fund which has been paid in by participant's employer.

General Counsel Exhibit D-10

The other amendment concerns the fact that the other elections in lieu of life annuities available to participants at age 63 may now also be made during the calendar year immediately preceding participant's retirement. In cases of normal retirement, this means that the election must be made during the calendar year immediately preceding participant's 65th birthday.

Please place this proposed resolution on the agenda of the next meeting of the Board of Directors of your corporation. If you have any questions regarding this, please don't hesitate to communicate with me.

C. W. KABLE, JR.
C. W. Kable, Jr.

Enc.

General Counsel Exhibit D-12

DEERING, MILLIKEN & CO., INC.

DATE: March 3, 1955

TO: Mr. J. M. Oeland

FROM: C. W. Kable, Jr.

SUBJECT: [redacted]

Reference is made to your memorandum of February 28 with respect to the termination of Mr. F. P. Mullendore. In accordance with Mr. Mullendore's incentive compensation contract, it is necessary to give him notice in writing of the termination of such contract. If this has already been done, may we please have a copy of the termination letter so that our files may be complete.

Do you plan to put Mr. Stallworth and/or Mr. Hawkins on an incentive compensation basis? If so, please furnish effective date, basic salary and percentage basis.

Charley

MLD:ARM

General Counsel Exhibit D-13

March 22, 1955

Mr. C. W. Kable, Jr.,
Deering Milliken & Company
New York, N. Y.

Dear Charlie:

In your recent letter you called our attention to the fact that we should confirm the resignation of Mr. Mullendore by letter as is outlined in the incentive bonus agreement. This has been done and a copy forwarded to you.

The incentive bonus of 1 per cent which has been received by Mr. Mullendore is to be divided, and one-half of 1 per cent is to go to Mr. W. S. Hawkins beginning February 5, 1955; and one-half of 1 per cent to Mr. W. H. Stallworth, Jr., beginning with February 21, 1955. Mr. Hawkins is our technical superintendent and Mr. Stallworth our production superintendent, and we have decided to put both of them on exactly the same basis. This is the reason, therefore, for dividing this 1 per cent which formerly went to Mr. Mullendore who was our production superintendent. We would appreciate your forwarding to us letters to be delivered to the two men in question outlining this incentive bonus agreement.

Very truly yours,

J. M. Oeland,
Treasurer

jmo-m
cc: Mr. Roger Milliken

General Counsel Exhibit D-14

DEERING, MILLIKEN & CO., INC.

DATE: March 28, 1955

TO: Mr. J. M. Oeland

FROM: C. W. Kable, Jr.

SUBJECT:

Thank you very much for your letter of March 22, 1955, with respect to writing incentive compensation agreements for Mr. Hawkins and Mr. Stallworth. It will be necessary for us to have the annual basic salary payable to each of these men in order to make it a part of their contracts and would appreciate receiving this information from you at your convenience.

CHARLEY

MLD:ARM

(Handwritten)

P. S. Mark "Confidential Do Not Open"

General Counsel Exhibit D-15

DATE: March 29, 1955
TO: Mr. J. M. Oeland
FROM: Roger Milliken

PERSONAL

Next time we get together please talk to me about your letter to Mr. Kable relative to Mr. Hawkins' and Mr. Stallworth's profit-sharing arrangements. I had an idea on this.

L. M.

cc: Mr. C. W. Kable
Mr. M. K. Milliken

General Counsel Exhibit D-16

March 30, 1955

Mr. C. W. Kable, Jr.,
Deering Milliken & Co.,
New York, N. Y.

Dear Charlie:

In the same mail that I received your letter with regard to incentive compensation agreements of Mr. Hawkins and Mr. Stallworth I received a letter from Mr. Milliken suggesting that I discuss the matter with him when we are together. I notice you received a copy of this letter, and we will keep the matter in abeyance until I have some more information at which time I will further discuss with you.

Very truly yours,

J. M. OELAND
Treasurer

jmo-m

General Counsel Exhibit D-17

April 19, 1955

Mr. C. W. Kable, Jr.,
Dering Milliken & Company
New York, N. Y.

Dear Charlie:

We have had some exchange of correspondence with regard to incentive compensation agreement for Mr. W. S. Hawkins and Mr. W. H. Stallworth, Jr. On referring to my letter of March 22nd you will notice that the incentive bonus of 1 per cent which had been received by Mr. Mullendore is to be divided ½ of 1 per cent to Mr. W. S. Hawkins beginning February 5, 1955, and ½ of 1 per cent to Mr. W. H. Stallworth, Jr. beginning February 21, 1955.

We had your letter of the 28th stating that it would be necessary to advise you of the annual basic salary payable to each of these men. They are both to receive $8000.00 per year annual basic salary.

On March 29th I received a letter from Mr. Milliken, copy going to you, stating that he would like to discuss the matter with me when we were together. Last week he was here, and after discussing he agreed that we could go ahead on the basis as outlined above. I would appreciate, therefore, your completing the contracts for these percentage bonuses for the two in question as presently outlined.

Very truly yours,

J. M. OELAND,
Treasurer

jmo-m
cc: Mr. Roger Milliken

General Counsel Exhibit D-18

DEERING, MILLIKEN & CO., INC.

DATE: June 14, 1955
TO: Mr. J. M. Oeland
FROM: C. W. Kable, Jr.
SUBJECT:

Enclosed herewith in triplicate are bonus contracts for Mr. Stallworth and Mr. Hawkins. A copy should be given to each employee; one copy of each may be retained by you, and one fully executed copy of each contract should be returned to us. If you have any questions regarding these contracts, please do not hesitate to get in touch with me.

CHARLEY

MLD:ARM
Enc.

General Counsel Exhibit D-19

July 8, 1955

Mr. C. W. Kable, Jr.,
Deering Milliken & Co.,
New York, N. Y.

Dear Charlie:

You will find enclosed herein signed bonus contracts for Mr. Stallworth and Mr. Hawkins. We are following your suggestion and the original has been retained by each of the above, and the duplicate by the writer.

We appreciate your help in this matter and are sorry it has been delayed.

Very truly yours,

J. M. OELAND
Treasurer

jmo-m
Enc.

General Counsel Exhibit D-20

August 31, 1955

Mr. C. W. Kable, Jr.,
Deering Milliken & Company
240 Church Street
New York, N. Y.

Dear Charlie:

You will note from copy of letter written today to Mr. Stallworth that he has been transferred to D.M.I.E.D. as of August 29th. We are cancelling the contract with him on the incentive bonus as of that date.

On September 5, Mr. W. A. Goodwin is to come to us as production superintendent from D.M.I.E.D. I have an understanding with him that present bonus that is being paid by D.M.I.E.D. to him will be allocated between that department and ourselves up to November 30. On or before that time a decision will be made as to whether he will be covered under the incentive bonus with us. I am writing in order to clarify our position with him until November 30.

Very truly yours.

J. M. OELAND,
Treasurer

jmo-m

General Counsel Exhibit D-21

October 24, 1956

Mr. C. W. Kable, Jr.,
Deering Milliken & Company
New York, N. Y.

Dear Charlie:

I returned today to the office and Bill Goodwin told me about the telephone conversation he had with you yesterday regarding his incentive bonus. At the recent meeting of our board of directors I discussed with Mr. Roger Milliken before the meeting the fact that no contract had been made with Bill for the incentive bonus for the year ending November 30, 1956. I requested Mr. Milliken to allow me to submit to the board of directors a year end bonus for Bill amounting to $2000.00. This was done and our board of directors approved my request. In view of our handling in this way it will not be necessary to complete the contract with Bill Goodwin.

Very truly yours,

J. M. OELAND
Treasurer

jmo-m
cc: Mr. Roger Milliken

General Counsel Exhibit D-23

January 27, 1955

Renegotiation Board
Washington 25, D. C.

Gentlemen:

This is to advise you that in the cases of the following textile mills affiliated with Deering, Milliken & Co. Inc., none of these contractors had any direct or indirect sales during the year ended November 28, 1954, or the month of December, 1954:

Laurens Mills
Darlington Manufacturing Company
Jonesville Products Company
The Hartsville Cotton Mill
Gaffney Manufacturing Company

Very truly yours,

DEERING, MILLIKEN & Co. INC.

C. W. Kable Jr.
Secretary & Assistant Treas.

CWK:ARM

General Counsel Exhibit D-25

DEERING, MILLIKEN & CO., INC.

DATE: March 21, 1955

TO: Mr. J. M. Oeland — Darlington

FROM: C. W. Kable, Jr.

SUBJECT: South Carolina Annual License Tax

We should like to make a study of the effect of the new provisions of the South Carolina License Tax Law on the corporations affiliated with Deering, Milliken. In order to make such study, we should appreciate your sending a copy of your license tax report filed in 1954 and also the one to be filed on or before March 31, 1955.

Your cooperation in this matter is greatly appreciated.

E. W. K.

MLD:ARM

General Counsel Exhibit D-26

DEERING, MILLIKEN & CO., INC.

DATE: June 10, 1955

TO: Mr. J. M. Oeland

FROM: C. W. Kable, Jr.

SUBJECT: S. C. Property Tax — 1955

Your statistics were reviewed with Mr. Smith and his assistant Miss Digby at the office of the South Carolina Tax Commission yesterday. The complaint of the State Tax Authorities was that although it did not appear that Darlington and many other Deering, Milliken mills had any loss in the way of productive facilities all of their assessments were going down, according to our proposals for assessment. I pointed out to the Government representatives that the flaw in the over-all reasoning probably referred to the fact that non-productive retirements, which had not been taken into account in adding to the assessment when taken into the plant were being taken into account in 1955 under their instructions, on the basis indicated in my instruction memorandum to you dated some months ago. It was generally agreed that we were to be allowed to add items of the character indicated in your explanatory notes, which tend to improve the product and not to increase the number of units of product or diversify the mill product. However, since there was a large deduction with respect to non-productive retirements involved in our proposal, it was agreed with the Commission that Darlington's assessment for 1955 be permitted to stand on the basis of 1954 assessment, without change, at $284,200.00. Please advise if this arrangement is satisfactory.

E. W. K.

CWK:ARM

General Counsel Exhibit D-28

DEERING, MILLIKEN & CO., INC.

DATE: April 17, 1956

TO: Mr. J. M. Oeland

FROM: C. W. Kable, Jr.

SUBJECT: South Carolina Property Tax
Darlington Manufacturing Corporation

An extension has been granted to May 31, 1956 in which to file our South Carolina property tax schedules. So that we may review these schedules and allow sufficient time to consider any questions before submitting them to the Tax Commission, please forward a copy of your proposed assessment figures to us as soon as possible.

CWK

ac

General Counsel Exhibit D-29

[Letterhead of]

DARLINGTON MANUFACTURING COMPANY
DARLINGTON, SOUTH CAROLINA

August 24, 1956

Mr. C. W. Kable, Jr.
Deering Milliken & Co., Inc.
240 Church Street
New York, New York,

Dear Mr. Kable:

With regards to the meeting held at Judson last Wednesday, I have checked our records and find that we do not have schedules for property additions and property retirements for the fiscal years 1950, 1951, 1952, and 1953. You mentioned at the meeting that much of Mr. Turnowsky's working papers were turned over to Mr. John DeMarco and were possibly in his files at the present time. It would be greatly appreciated if you could forward these schedules for the four years mentioned provided you can find them in Mr. DeMarco's files.

It was a pleasure to see you again and the meeting was very interesting and very beneficial to me personally, and I am sure it will prove to be beneficial to all the Deering Milliken mills.

I shall be looking forward to hearing from you soon because of the time limit we have in preparing these schedules. Thanking you in advance, I am,

Very truly yours,

C. L. WATFORD
C. L. Watford, Accountant

CLW:rw

General Counsel's Exhibit D-30

July 25, 1956

Mr. C. W. Kable, Jr.,
Deering Milliken & Company
New York, N. Y.

Dear Charlie:

We recently let a contract for preparing the old supply room area for eighty-four 50" looms. This contract covers clearing out the area, putting steel posts in place of brick ones, and steel beams over the old belt alley areas. The cost of this entire job will run around $45,000, $5000 of which is the electrical conduit for the new looms.

We were considering the possibility of trying to expense this entire amount. It is my opinion that we had better capitalize the electrical work amounting to around $5000, and the new flooring amounting to around $10,000. You may remember in our adjustment with the internal revenue agent for 1951-52 we were required to capitalize the new floors in the two weave rooms. It is my feeling that should we go ahead and capitalize the floor in this area we would be in a much better position to defend ourselves for expensing the rest of the work.

I would appreciate your opinion on this question. In a letter I am writing you regarding our year end profits it will be brought out that we will not have any profits after we expense something over $300,000 this year. The larger items of this expense will be: Duo-Roth and Dixon saddles for all of our warp spinning. Re-arranging our E-model looms and putting on 26" loom beams, and preparing the area and installing the new looms. This condition, of

course, will call for many questions by the internal revenue agent. I feel sure they will capitalize part of this but we may be able to keep it down to a minimum if we have some good talking points. I will surely need your help to defend our position and I would appreciate your advice.

Very truly yours,

J. M. Oeland
Treasurer

jmo:m
cc: Mr. Roger Milliken
Mr. K. M. Lowry

General Counsel Exhibit D-32

To: See Below

From: C. W. Kable, Jr.

Subject: *South Carolina Information Returns—Current Year*

Mr. Beattie, the Director of the Income Tax Division of the South Carolina Tax Commission, has written me to advise that the Commission has no intention of requesting further information returns relating to 1955. He states that what they are trying to accomplish is to correct the matter of filing information returns for 1956 and later years. In his letter to me, Mr. Beattie stated in part:

"No branch office or employee has authority to grant permission to use substitute forms. This is all handled in writing from my office. Each publisher or taxpayer desiring to use substitutes for our Form 1202 must secure permission annually in writing.

". . . We list herein the conditions wherein substitute forms are accepted by us. You will notice that one is that they must be on 16 pound paper. One or two of your mills . . . bought the proper substitute forms but retained the copy on 16 pound paper that should have been mailed to us and sent us a different copy on very thin unacceptable paper. So, you see, even the publisher could not have caught such mistakes.

(1) It must show all the information called for on our Form 1202.

(2) It must be marked for South Carolina.

(3) It must be clearly legible.

(4) Given names of female employees must be used.

(5) The form must be printed on 16 pound paper.

(6) It must be accompanied by a summary sheet which is our Form 1201, a pre-punched machine card."

In the light of the above, it seems to me that it would be intelligent for all of our affiliated mills located in South Carolina (A) to purchase their stationery supplies from the same source, first making sure that the source is approved by the State Tax Commission. This might even effect an economy in purchasing; (B) if the 16 pound copies are not uniform throughout, care should be taken to see to it that the State Tax Commission gets the 16 pound copies of the approved form.

Thus, with a little care, it seems that we can continue to live with the South Carolina Tax Commission in this matter without jeopardizing our past excellent relations with them. A copy of this letter is being sent to Mr. H. C. Byrd, so that he may explore the possible economies of arranging for centralized purchasing of forms (even for 1957 if it is too late to accomplish this objective for the current year).

C. W. KABLE, JR.

To:

E. A. Rice
R. L. Collett
P. C. Franklin, Jr.
Katherine Meng
G. Fechtmann
J. E. Hicks
A. E. Lindblom
C. L. Watford
B. E. Burns
N. O. Nielsen
J. A. McArthur
A. C. Sorensen
H. C. Byrd
R. J. Netter

General Counsel Exhibit D-33

January 11, 1957

Mr. C. W. Kable, Jr.,
Deering Milliken & Co.,
240 Church Street
New York, N. Y.

Dear Charlie:

You will find enclosed herewith an itemized list of capital additions that Mr. Kenworthy, the Revenue Agent, is proposing to make for the years 1954 and 1955. You will note I am forwarding a copy of this letter and list to Mr. William Moss at D.M.I.E.D. as requested. Below I am listing some comments on some items which might be helpful to both of you before going further into this matter.

Item 1 (a) We purchased from American Rieter Company new filling roller bearing spindles for all of our filling which included 2" frames of Whitin secondhand spinning installed during the year, and 36 Saco-Lowell frames. In addition we purchased sufficient warp spindles from the same company to install on 20 frames of our Saco-Lowell spinning which was on filling and changed to warp. This was a replacement in the case of all the spindles as the Whitin frames we purchased had filling spindles on them that were discarded.

Item 1 (b) We purchased from Coleman Company sufficient wood oilless saddles and nebs for the entire amount of our spinning amounting to 44,624 spindles. These saddles and nebs were bought in order to improve our quality by less frequent oiling and greasing. I might make this comment: that during 1956 we

purchased Dixon front roll roller bearing which replaced the Coleman saddles and front nebs on about 24,000 spindles. This should give us a good talking point should the Revenue Agent capitali this Dixon equipment in 1956.

Item 1 (g) We purchased from E. F. Rose Company revolving top clearer rollers for our spinning. We previously had on our frames the flat top clearers and purchased this equipment to replace them for the quality of our work.

Item 2. (a) (b) & (c) This covered the cost of tearing down a secondhand spooler we bought and putting it up in our plant, as well as the cost of transportation.

Item 2 (c) This was for the expense of Mr. Toher who was working for us as an engineer to go to Indianapolis to inspect the spooler before purchasing. I seriously question whether this item should be capitalized.

Item 3. We purchased from Gosset Machine Works the change-over parts to be placed on our cards on going to a larger can. This covers merely the change-over parts and does not cover the labor or the roving cans.

Item 9 (a) We replaced our rack controls on our pickers with a pneumatic rack control.

Item 9 (b) Covers expense of two pickers we bought from Hartsville being moved and placed on the floor in our plant.

General Counsel Exhibit D-33

The following items are shown under 1955 additions:

Item 3 You will note this is a replacement of our 9x4½ flyers by 10x5.

Item 5 This covers the cost of new section beams and parts.

Item 5 (b) covers the new loom beam barrels. This was a replacement, and only the cost of materials purchased are shown in the item as we used our own labor to make the change on the looms.

Item 6 We made a contract with Grinnell & Company to replace the sprinkler system in our two weave rooms. On removing one section of this system in the lower weave room we found the condition of the pipe much better than had been anticipated and the sprinkler system was not clogged up with a collection of mud and rust as we had anticipated. We replaced the section that we tore out and cancelled the contract. This covers the replaced section in the lower weave room.

If either you or Mr. Moss have any other questions on the items listed I will be glad to discuss with you. I have covered the items that comprise the biggest part of the additions. It is entirely possible that you have precedents set up at other mills for similar installations that you can use to good advantage in discussing further with Mr. Kensworthy the agent who did the work here.

Very truly yours,

J. M. Oeland
Treasurer

Enc.
jmo-m
cc: Mr. Wm. Moss

General Counsel's Exhibit E-2

February 22, 1955

Mr. P. J. Wilson, Jr.,
Insurance Department
Deering Milliken & Company
New York, N. Y.

Dear Paul:

Recently when Mr. Henry Sloan made a survey of our plant for the wage and hour compliances, he recommended that we give consideration to increasing the hospital benefits of our group insurance. The matter has been brought to our attention by certain of our employees through an overseer. We are writing to know whether changes can be made by us if we decided to increase the hospital benefits, charging the additional costs to our employees. We know that this as an over all group policy, and wondered if there were not some of the mills in the D. M. group that give more liberal benefits along this line than we do here at Darlington. This letter is just to explore the matter, and get from you any information you feel will be helpful. We, of course, would clear the matter with Mr. Roger Milliken should we decide to explore it further.

Very truly yours,

J. M. Oeland,
Treasurer

jmo-m
cc: Mr. Sterling L. Smith

General Counsel Exhibit E-3

BULLETIN !

DEERING MILLIKEN
1955 SAFETY CONTEST

DATE: August 18, 1955

To: Mr. J. M. Oeland—Darlington

FROM: Paul Wilson, Jr., Insurance Manager

Attached are the mill standings at the end of the second reporting period.

A very good overall lost time frequency rate is being maintained at our mills. However, the severity rate has increased 25% over the rate for the 1954 year and 80% over the severity rate for 1952.

A review of several serious accidents indicates that a large percentage of them resulted from employees doing the job improperly.

We believe this can be overcome by making certain that each employee is aware of the inherent hazards of his particular job and that he is properly instructed by the Supervisor on correct job procedure.

It is also important that Supervisors follow-up to make certain that their instructions are being carried out.

CC: Mr. W. H. Stallworth—Darlington

General Counsel Exhibit E-3

3/28/55—6/19/55

GROUP I

Mill Standings	Manhours	Total Accs.	Med. Accs.	Med. Freq.	L. T. Accs.	L. T. Freq.	Days Lost	Sev.	Freq. Last Year	% Change
JUDSON	1,535,826	249	15	9.8	0	0	0	0	1.4	—100
PACOLET	1,403,904	1236	36	25.6	0	0	0	0	4.2	—100
NEW HOLLAND	1,384,401	862	61	44.1	0	0	0	0	.71	—100
DRAYTON	1,154,527	1919	37	32.0	0	0	0	0	.0	0
LAURENS	875,001	529	16	18.3	0	0	0	0	.53	—100
GAFFNEY	769,761	560	20	26.0	0	0	0	0	1.7	—100
LOCKWOOD	509,377	285	26	51.0	.1	2.0	30	.059	2.7	+26
MONARCH	964,305	674	25	25.9	.3	3.1	94	.098	2.5	+24
ABBEYVILLE	1,188,468	426	57	48.0	.4	3.4	87	.073	2.6	+31
GAINESVILLE	906,254	270	33	36.4	.4	4.4	205	.226	1.7	+159
LOCKHART	825,055	1582	31	37.6	.5	6.1	165	.200	.54	+1030
TOTAL	11,516,879	8,592	357	31.0	17	1.5	581	.050	1.7	—12

GROUP II

Mill Standings	Manhours	Total Accs.	Med. Accs.	Med. Freq.	L. T. Accs.	L. T. Freq.	Days Lost	Sev.	Freq. Last Year	% Change
EXCELSIOR #4	512,718	60	29	56.6	0	0	0	0	1.2	—100
JOHNSTON	390,243	62	13	33.3	0	0	0	0	2.0	—100
G. MILLIKEN	389,354	68	20	51.4	0	0	0	0	1.3	—100
MCCORMICK	680,486	96	29	42.6	1	1.5	9	.013	2.2	—32
EXCELSIOR #2	451,358	52	15	33.2	1	2.2	5	.011	7.2	—79
HARTSVILLE	593,494	249	21	35.4	2	3.4	69	.116	7.4	—54
EXCELSIOR #1	428,212	76	42	98.1	2	4.7	2	.005	3.2	+47
OTTARAY	321,698	359	13	40.4	2	6.2	159	.494	1.3	+377
HATCH	455,358	103	33	72.5	3	6.6	122	.268	5.9	+12
DUTCHESS	283,839	10	6	21.1	4	14.1	134	.472	4.9	+188
DARLINGTON	610,313	106	34	55.7	10	16.4	343	.562	11.3	+45
FARNSWORTH	400,043	31	30	75.0	8	20.0	38	.095	14.0	+42
TOTAL	5,517,116	1272	285	51.7	33	6.0	881	.160	5.5	+9

GROUP III

Mill Standings	Manhours	Total Accs.	Med. Accs.	Med. Freq.	L. T. Accs.	L. T. Freq.	Days Lost	Sev.	Freq. Last Year	% Change
COWAN	217,012	9	9	41.4	0	0	0	0	7.2	—100
GAYLEY	179,525	59	4	22.3	0	0	0	0	2.2	—100
EXCELSIOR #3	121,432	6	6	49.4	0	0	0	0	7.9	—100
WOVEN PLASTICS	107,321	17	9	83.9	0	0	0	0	0	0
JONESVILLE	42,233	0	0	0	0	0	0	0	0	0
D. M. EXPORT	29,504	6	2	67.8	0	0	0	0	0	0
D. M. TRUCKING	9,202	2	0	0	0	0	0	0	0	0
KINGSLEY	182,241	19	3	16.5	1	5.5	80	.439	2.7	104
D. M. R. T.	72,594	9	6	82.6	1	13.8	9	.124	26.8	—49
LOCKHART POWER	66,418	7	3	45.2	2	30.1	6073	91.4	0	+100
TOTAL	1,027,482	134	42	40.1	4	4.0	6162	6.165	4.5	—11
GRAND TOTAL	18,061,477	9998	684	37.8	54	3.0	7624	.423	3.0	0

General Counsel Exhibit E-4

cc: Mr. J. M. Oeland
Mr. W. H. Stallworth

Date: March 16, 1955
To: Kate MacFarland
From: Paul Wilson, Jr.
Subject: SAFETY SUGGESTION CONTEST

Last November at the Personnel Managers meeting in Gainesville, it was agreed that we would conduct a Safety Suggestion Contest with a cash award of $200. paid to three employees who submit the best Safety Suggestion for each of three mill groups. The following are the general rules and procedures for all mills to follow as closely as possible although we realize there must be some deviation depending upon the individual circumstances. From the experience we gain during this contest, we ask that you advise us of any suggestion for improving future contests which we might conduct.

The general purpose of this contest is:

(1) To obtain the employees own ideas on how his work or that of his fellow employee can be carried on with less danger of accident.

(2) To stimulate employees interest in safety.

(3) To stimulate employees interest in the affairs of the company.

(4) To secure practical suggestions for improved working methods. We believe efficiency and safety go hand in hand.

In conducting the contest at each mill it should be made clear to the employees:

(1) All suggestions will be given careful and impartial consideration.

(2) Employees will receive some recognition for any suggestion which is used by the company regardless of whether or not they win the big prize. Each mill will pay a minimum of $5. for any suggestion they adopt.

(3) A grand prize will be offered by each mill (suggested—$20. or $25.) for their best suggestion.

(4) All suggestions will be filed for one year for future reference in the event a change is made in the plant and an employee maintains that such change is the exact suggestion he made in the Safety Suggestion Contest.

(5) Every suggestion should be acknowledged by a "thank you" note which also advises the employee that he can contact the Personnel Office as to the reasons his suggestion did not win or be used.

(6) Each suggestion must be dated in case of duplicate suggestions. In the event of a duplication on the same date—the award, if any, will be divided.

The following are the rules and procedures to be followed in this contest:

A. Contest Period

(1) April 1, 1955 through April 30, 1955 is the contest period in which employees will submit suggestions to their mill.

(2) Each mill will determine their best suggestion and send six copies of it to the Insurance Department by May 15, 1955. Any suggestions

received after that date can not be considered. Each entry sent to the Insurance Department must show the name of the employee and the mill and only one entry may be submitted from each mill.

(3) Final winners will be announced during the week beginning May 30, 1955. The committee making the final decision will consist of a representative from each mill group, but not to judge in the group which he represents, a representative from Industrial Engineering Department, Engineering Department and Liberty Mutual Insurance Company.

B. Mill Groupings

(1) All mills eligible for the contest are divided into the following groups and the winning suggestion in each group will be awarded $200. by New York Insurance Department. We have not included the Service Corporation or the Research Corporation because of the nature of their operations.

Group A	Group B	Group C
Darlington	Judson	Abbeville
Gaffney	Drayton	Woven Plastics
Hartsville	Gayley	D. M. Trucking
Monarch	Kingsley	Cowan
Ottaray	Laurens	Farnsworth
Jonesville	Gerrish Milliken	Excelsior
Lockhart	Clemson &	Union
Lockhart Power	Treating	Pendleton
Pacolet	Division	Rutherfordton
Gainesville		Hatch & Union
New Holland		Processing
		Johnston
		McCormick

General Counsel Exhibit E-4

C. Type of Suggestions Acceptable

(1) This is a Safety Suggestion Contest and the idea must be connected directly with a safer operation. Ideas in which the purpose is to save time or money must have a direct bearing on accident prevention. The "Safety" does not only apply to employee injury but the suggestion may also be to prevent continuous accidents which primarily damage the plant or equipment.

(2) The suggestion must be new, practical and useful and the more directly it is associated with improved efficiency or production, the more valuable it becomes.

D. Employees Eligible

All regular employees who are on the payroll on May 30, 1955 are eligible. The following are specific exceptions:

1. Employees who are not paid on the regular weekly payroll.

2. First line supervision (or secondhands.)

E. Operation

1. Each entry must be submitted on an official form.

2. The Insurance Department will distribute these forms.

3. Each suggestion must be signed.

General Counsel Exhibit E-4

F. Administration

(1) The responsibility for conducting each contest will rest with the individual responsible for personnel activities.

(2) A committee of three will judge the suggestions at each location. It is recommended that this committee consist of:

(a) Personnel Manager—Chairman
Plant Manager
Superintendent

The Liberty Mutual servicing engineer will assist any group in evaluating the suggestions but will have no vote on the winners.

(3) All supervisors should willingly assist any employee who comes to them for help in preparing their suggestion. This does not mean to help in developing the idea, but merely the manner of presenting or writing the suggestion.

General Counsel Exhibit E-4

Bulletin Board—Notice

SAFETY SUGGESTION CONTEST

The Deering Milliken Insurance Department has announced a Safety Suggestion Contest beginning April 1, 1955 and ending April 30th. The Deering Milliken Mills will be divided into three groups. ..... Mills is in group .....

A cash award of $200.00 will be paid to the employee submitting the best safety suggestion in each group.

Any employee of ..... submitting a usable suggestion, as determined by his local judging committee, will receive $5.00 and will be eligible to compete for the ..... grand prize of $..... The winner of the ..... contest will compete with the winners from the other mills in group ..... for the $200.00 grand prize.

The purpose of this contest is to stimulate interest in Safety and to secure practical suggestions for improvement.

Official entry forms may be obtained from your overseer who will explain the rules on the entry form and assist you in any way possible.

General Counsel Exhibit E.5

DEERING, MILLIKEN & CO. INC.

DATE: June 9, 1955

TO: T. J. Reemes	— Abbeville	J. M. Edwards	— Johnston
T. N. Hunnicutt	— Clemson	B. C. Stoupe	— Judson
A. D. Strout	— Cowan	R. B. Dozier	— Kingsley
Miss K. Macfarlan	— Darlington	L. O. Pugh	— Johnston
S. W. Nicholson	— Drayton	J. Good	— Lockhart
E. G. Allee	— Ex. Union	H. W. Lawson	— Lockhart Power
H. W. Armstrong	— Farnsworth	J. Morrow	— McCormick
Mrs. W. Coggins	— Gaffney	T. J. Glenn	— Monarch
B. C. Jarrard	— Gainesville	B. R. Turnipseed	— New Holland
C. B. Gentry	— Gayley	J. W. Green	— Ottaray
F. H. Anthony	— Gerrish M.	T. J. Trowell	— Pacolet
C. G. Dedmont	— Hatch	J. B. O'Shields	— Pendleton
Mrs. C. Inglett	— Hartsville	B. R. Magness	— Rutherfordton

FROM: Paul J. Wilson, Jr.

SUBJECT: SAFETY SUGGESTION CONTEST

Please be advised that the various committees selected the following winners in our three safety suggestion contests:

Group A—J. P. Lankford —Hartsville Mill

Group B—Ira B. Mayfield —Laurens Mill

Group C—Geraldine LaChance —Farnsworth Mill
Carrie Garnet —Farnsworth Mill

We were disappointed with the participation in the contest although the winning suggestions seemed very good. In reply to our recent questions, most of you found nothing basically wrong with the contest, but found it just didn't captivate the interest of the employees. More publicity seemed to be the answer since we had only one suggestion for a different type of contest: that being a Safety Slogan contest.

Thank you all for your efforts and if someone has a good idea for another contest, lets hear it so that we can make plans early to insure its success.

PJW/am

General Counsel Exhibit E-6

DEERING, MILLIKEN & CO., INC.

DATE: June 13, 1955

TO: Mr. J. M. Oeland—Darlington

FROM: Paul J. Wilson, Jr.

SUBJECT: SAFETY SUGGESTIONS

Attached you will find the winning suggestions submitted by each mill in the recent Safety Suggestion Contest. We have purposely not identified the suggestions and have condensed them as much as possible by leaving out drawings, photographs etc., which were attached to several suggestions.

We compiled this list so that each mill can perhaps profit by sharing each other's ideas. Keep in mind that these are our employee's suggestions for improvement and each one should be carefully considered for possible use at your plant. I recommend that each suggestion be reviewed at successive safety meetings not only in its present form but by associating it with comparative or similar operations in your plant. Each idea if properly discussed at the safety meetings should at least stimulate thinking on the part of the committee that will improve your present program.

PJW/am

Attached

cc: Mr. W. H. Stallworth — Darlington
Mrs. K. Macfarlen — Darlington

General Counsel Exhibit E-6

SUGGESTIONS	REASONS
A small bulletin board be placed in each department with a blank hazard and housekeeping sheet on it and that all employees be instructed by their supervisor to write on this sheet, as soon as it is noticed, anything that could cause an accident or anything that would help keep the job cleaner.	Chairman of Safety Meetings could make a daily check of this sheet and have the situation corrected before an accident occurred.
All cleavers and switch boxes on all electric lifts be insulated with rubber.	When lightning once hit the corner of the plant, the current contacted the steel structure of the plant, causing a high voltage on lifts in the plant.
If there is an employee having minor accidents, that he or she be put on the Safety Committee as soon as possible.	That by education they will become more safety-minded.
Develop a more efficient method of vacating the plant in case of fire or disaster. This should be done by all departments having designated exits and alternate exits to use for such an emergency.	In a major fire, without proper precautions being taken in advance, loss of life and serious injury could result.
*Overhead rail that brings lap trucks from Picker Room to Card Department should have a signal that is tripped when a lap truck starts down the rail from the elevator lift to the lap storage room.	Employees working in the lap storage room are subject to being struck by lap trucks when no warning has been given that a lap truck is coming down on the rail.
Take the worst accident in the Deering Milliken Plants that happen each month. Have it filmed exactly as it happens, and show it at all plants at safety meetings.	To point out facts of carelessness and hazards of worst accidents.
Position the brake switch on warper within easy reach of the yarn storage release lever.	To eliminate hazard of bumping into the press roll handle and to increase the efficiency of the warper tender.
As jobs improve or new assignments are given, we get new ideas on improving our safety system. To keep our safety methods up to date with	New Ideas that may occur to an individual at any time can be written down and submitted and may be useful in improving our safety system.

(*Winning Suggestion)

General Counsel Exhibit E-6

SUGGESTIONS	REASONS
our changing pace, a Suggestion Box for Safety should be maintained in a convenient location all times.	
*Have a luminous band on all fire extinguishers and portable lights throughout the plant.	In summer months the electricity is knocked out quite often by lightning. This could cause fire, but with bands on extinguishers and lights we could find these things as needed.
Improve the drawing frame shipper handle by placing a red dot on the top of the wheel to clearly indicate when the belt is on the right pulley.	The present handle frequently strikes the operator when the frame knocks off. A blow of this nature on the head or breast could result in a serious injury.
Be careful—A machine runs better when all parts are there. P.S. So does a human.	
Employ a Safety Engineer whose duty is to maintain safety for the employee as well as the company. He should visit the various departments at intervals unknown to the employee, with a constant eye open for poor working conditions, such as insufficient lighting, lack of safety glasses or safety shoes, when needed, use of improper tools, etc. thus keeping the employee alert and safety conscious at all times. A rule should be set by the management whereby any employee receiving three warnings within a year's time should appear before the Safety Engineer for disciplinary action.	If this plan is accepted, the employee should have more safety knowledge and the accidents would be reduced to a minimum.
Give safety record certificates every five or ten years to employees with perfect safety records.	This will eliminate many accidents. Every employee will work to keep a perfect record. They will always be alert for things that cause accidents to themselves and others. This will also keep better housekeeping.
Corners of all tables should be rounded.	To avoid bumping against corners, causing bruises which could become serious injuries.
(*Winning Suggestion)	

General Counsel Exhibit E-6

SUGGESTIONS	REASON
Tagging and marking system—Red Tags for men working on lines or equipment. White tags for neutral ground lines, machinery that is normally off to be checked before closing Mark all air brake switches, all circuit breakers and lines naming same.	One man may open lines or machinery and another have to close because of changing shifts etc.
Give awards similar to the service awards for employees working a given number of years without a lost time accident.	To stimulate interest in accident prevention and safety.
Number all ladders so that anyone who might notice some broken parts, or unsafe condition about ladders could report it by number to the shop to be repaired.	So that ladders could always be accounted for as to their safety.
Each department should supervise and regulate its own safety program with constant check being made on it by the manogerial staff. The following are considered basic for each employee: (a) When going to work in a department an employee should be briefed on the safety regulations. (b) Should be told of hazards of his job and how to avoid them. (c) He should be made to realize that safety is the 100% responsibility of everyone. (d) Quarterly meetings for all employees in each department so that the employee may express his idea. (e) Every employee should notify his supervisor of any new hazard as soon as found and the supervisor should have it corrected or prevent anyone from coming in contact with it until it is corrected.	To prevent accidents to employees and property.

General Counsel Exhibit E-6

SUGGESTIONS	REASON
(f) Horseplay should be subject to disciplinary action.	
(g) Employees should be advised as to what type of clothing they should wear to suit their job.	
(h) Machinery and equipment should undergo alterations so as not to cause unnecessary strain upon the employee.	
(i) All employees should be shown how to cut off any machinery in department, so that in case of an accident he will know how to cut the machine off without having to look for someone to do it for him.	
(j) Transit personnel, should also be briefed on accident hazards.	
(k) Employees should be briefed in first aid at the quarterly meetings.	
Make shipper handle go all the way across on warp compressor, as there is no way of knocking it off if one gets caught on opposite side of warp.	This could safe a life.
*This mill be equiped with an emergency lighting system and also that the mill as a whole be drilled in what they should do in case of an emergency.	When the lighting system failed it threw a group of people into hysteria. The only way out was by feeling which would be too slow and dangerous in case of fire.
Safety signs at points of possible (or past) accidents.	Unconscious pause to read sign may prevent an accident. Examples—HIGH VOLTAGE: WATCH STEP: HANDS OFF.
Triangular mirrors be put at each doorway that lift for trucks use.	So that employees walking and truck operators can see before going around corners or cross doorways

(*WINNING SUGGESTION)

General Counsel Exhibit E-6

SUGGESTIONS	REASON
Suitable storage rack or more suitable space or stocking arrangements be provided to store empty loom beams in Preparation Department.	Beams are stacked too high. Great danger that beams will roll and fall when a person climbs up to secure the hooks of the tram rail to the beam. Also danger of being shocked by electric current in tram rail.
Replace old blow pipes with new lighter pipes and self winding reels. Remove pipes from between closely spaced cards and other machinery having unprotected shafts and pulleys.	Half the time required for use of blow pipe is spent on replacing pipe on spiral or other make shift rack. There will be less danger of pipe rapping around shaft on nearby machinery.
Revision of parking regulations around mill to provide "no parking" area, revised flow of cars, controlled pedestrian walks and pickup and discharge area."	Congested condition in auto and pedestrian traffic at time of shift change will be relieved and safety can be improved.

General Counsel Exhibit E-7

January 14, 1957

Mr. Paul J. Wilson, Jr.,
Deering Milliken & Co.,
New York, N. Y.

Dear Paul:

We have your letter of January 11th with regard to disposition of the mill village houses and the two automobiles we had listed.

The houses were sold at auction to townspeople and a Realty Company. The Dodge truck was bought by Monarch Mills but the car was sold to someone outside of the organization.

Very truly yours,

J. M. Oeland
Treasurer

General Counsel Exhibit E-8

DEERING MILLIKEN SERVICE CORPORATION
PURCHASING DEPARTMENT

DATE September 13, 1955

COPIES TO:

TO: Messrs. W. A. Goodwin, J. M. Jackson, J. M. Oeland, Roger Milliken, W. A. L. Sibley, and M. C. Stone

FROM: Hal C. Byrd

SUBJECT: Chartered Plane—Lockwood Division

The following is furnished for your information regarding the chartered plane for the Lockwood sale:

Equipment: Silver Falcon furnished by Eastern Air Lines. Capacity, 40 passengers.

Schedule: September 19, 1955

Leave Atlanta:	5:00 A.M. EST
Leave Greenville:	6:00 A.M. EST
Leave Spartanburg:	6:25 A.M. EST
Leave Charlotte:	7:05 A.M. EST
Leave Greensboro:	8:00 A.M. EST
Arrive Waterville:	11:55 A.M. EST

September 21, 1955—Return

Leave Waterville:	5:00 P.M. DST
Arrive Greensboro:	8:40 P.M. EST
Arrive Charlotte:	9:35 P.M. EST
Arrive Spartanburg:	10:10 P.M. EST
Arrive Greenville:	10:35 P.M. EST
Arrive Atlanta:	11:35 P.M. EST

General Counsel Exhibit E-8

Meals: Hot breakfast comprising juice, bacon and eggs, toast, sweet rolls, and coffee will be served on the outgoing trip. A complete filet mignon supper will be served on the return flight.

Insurance: It is our understanding that Eastern Air Lines assumes the same responsibility on this flight as they would on their regular scheduled flight. In the event any of the passengers so desire, they may take out additional coverage with the machines in the air terminals or have a local underwriter supply their desired coverage.
The special executive air insurance carried by Deering Milliken on the key mill personnel will apply on this trip, according to Mr. Paul Wilson of our insurance department in New York.

Manifests: We will supply Eastern Air Lines and Mr. Paul Wilson with a complete passenger manifest on the outgoing charter flight to Waterville showing names of paggengers and company affiliation. On the return trip from Waterville, Mr. Bob Wise will telephone this information to Mr. Paul Wilson prior to departure of the flight.

We will arrange transportation from the Waterville airport to the Elmwood Hotel.

HCB

HCB/mtw

General Counsel Exhibit E-8

DEERING MILLIKEN SERVICE CORPORATION
PURCHASING DEPARTMENT

DATE September 14, 1955

COPIES TO:

TO: Messrs. W. A. Goodwin, J. M. Jackson, J. M. Oeland, Roger Milliken, W. A. L. Sibley, and M. C. Stone

FROM: Hal C. Byrd

SUBJECT:

Following is the current list of passengers showing where they will board the chartered plane for Lockwood September 19, 1955:

Leave Greenville—6:00 A.M.:

W. A. Goodwin

Leave Spartanburg—6:25 A.M.

Roger Milliken
W. A. L. Sibley
M. C. Stone
Jesse Jackson
Everett Clarkson (Rigger)

Leave Charlotte—7:05 A.M.

J. M. Oeland
Don Hamilton (Dealer)
Pat Hall (Dealer) (up only)
Sam Schwartz—(Dealer)

General Counsel Exhibit E-8

Leave Greensboro—8:05 A.M.

Joe Gillespie (Burlington)
C. E. Dorn (Dan River)
C. M. Vernon (Dan River)

If you have any questions regarding this trip, please call Mr. Bill Collister as I am leaving today for Waterville.

HCB

HCB/mtw

General Counsel Exhibit F-3

[Letterhead of]

DEERING, MILLIKEN MILLS

TEXTILE MACHINERY DEPARTMENT

Date:

To:

Attention:

From:

Subject:

General Counsel Exhibit F-4

DARLINGTON MANUFACTURING COMPANY

DARLINGTON, S. C.

Date: February 28, 1955

To:

Mr. George Asnip	Mr. C. T. Holland
Mr. J. M. Bailey	Mr. W. S. Manning
Mr. George Baker	Mr. J. J. Norton, Jr.
Mr. Marion Beacham	Mr. I. S. Pitts, Jr.
Mr. S. J. Craig	Mr. H. L. Pratt
Mr. Mr. E. DeFore	Mr. G. G. Simmons
Mr. R. C. Edwards	Mr. F. A. Thompson
Mr. L. C. Ellis	Mr. W. E. Thrailkill
Mr. J. A. Ferguson	Mr. A. B. Sibley
Mr. L. J. Fisher, Jr.	Mr. N. A. L. Sibley
Mr. Winston Garth	Mr. M. C. Stone
Mr. E. H. Hines, Jr.	Mr. W. B. D. Stroud

From: J. M. Oeland

Mr. W. H. Stallworth from the New Holland plant started to work with us on February 21st as our Production Superintendent. He took the place of Mr. F. P. Mullendore who has accepted a position with a cotton mill in Douglasville, Georgia.

This is another instance of a promotion within the Deering Milliken mills as Mr. Stallworth was card room overseer at the New Holland plant. Mr. W. S. Hawkins is our Technical Superintendent.

General Counsel Exhibit F-4

We will appreciate very much your making a note of this in order that any matters connected with our oganization can be routed to the proper person.

J. M. O.
J. M. O.

cc: Mr. T. D. Truluck
Mr. R. H. Bush
Mr. Harry DeFore
Mr. K. M. Lowry
Mr. H. E. Williams
Mr. A. J. Dillard, Jr.
Mr. Sterling L. Smith
Mr. R. B. Newton
Mr. E. F. Flanigan
Mr. H. C. Byrd

General Counsel Exhibit F-5

August 31, 1955

Mr. W. H. Stallworth
D. M. I. E. D.
Box 1698.
Greenville, S. C.

Dear Bill:

In your contract dated June 9, 1955, which covers the terms and conditions of your incentive bonus, you will note that the contract is to be terminated at the will of either party in writing.

You were transferred to D.M.I.E.D. on August 29, and I am writing to cancel the contract for your incentive bonus as of that date. You will also note in the contract as outlined, that the amount of bonus during the period that you were employed by us is to be determined by certified public accountants, and a proportion as computed by them will be paid you at a later date. Our accounting year ends November 30, and it is usually in late January before we have the computation made by the auditors.

We will follow with interest your progress in your new work, and certainly hope it will work out to your advantage.

Very truly yours.

J. M. Oeland.
Treasurer

jmo-m
cc: Mr. C. W. Kable, Jr.

General Counsel Exhibit F-6

August 31, 1955

Mr. K. M. Lowry
Box 1698
Greenville, S. C.

Dear Ken:

I had a talk with Bill Goodwin and we have come to an understanding as to his going to work at Darlington as production superintendent. We would like to ask that the transfer be made as of September 5, which is the beginning of our new period.

I would like to express to you my appreciation of your cooperation in this matter. I think Bill feels satisfied about taking up the work here. I made it clear to him that there would be no looking back, and going over your understanding with him if he accepted the job. I am looking forward to working with him and continuing the progress that has been begun in the last several weeks in our plant.

Very truly yours,

J. M. Oeland,
Treasurer

jmo-m
cc: Mr. Milliken

General Counsel Exhibit F-10

April 16, 1956

Mr. K. M. Lowry
Box 1698
Greenville, S. C.

Dear Ken:

You will note from the enclosed that plans have been completed for the dinner to be given the Presbyterian graduating students next Friday. It is my understanding that either you or Charlie Johnson—or both, will plan to attend this dinner. It is my plan to make the matter very informal; to outline for the group our reasons for wanting college graduates in our organization and the opportunities we felt we could offer. It may be entirely possible that this matter could be much better handled by you and Charlie. I will be glad to act as host and turn over to you the matter of presenting the Deering Milliken organization to the group. I wonder if you think it would be well for us to have available any folders, and I am particularly thinking of "Fabric Magic by Milliken" folder put out a year or more ago showing pictures of all the mills and containing information about the organization. I do not have sufficient copies of the folder available, and if you think well of it, I would appreciate either you or Charlie seeing if they can be secured to pass on to the group. By the time I contacted New York I am afraid I would not get them delivered on time.

You will note that we have included in the invitation. Captain James H. Rutledge who Dr. Bellingrath suggested might be interested in civilian employment. He is a graduate

of Juniata College with degree in Business Administration, and according to my understanding has not been interviewed by Charlie. I have certainly had the cooperation of Martin Wallace, and you will note that W. B. Ketchum and Carey Moore, graduates of Presbyterian who work at Laurens will be with us to discuss their experiences with the Deering Milliken group.

Very truly yours,
J. M. Oeland
Treasurer

jmo-m

cc: Mr. C. C. Johnson

General Counsel Exhibit F-12

Deering Milliken Service Corporation
INDUSTRIAL ENGINEERING DEPARTMENT

February 18, 1955

PERSONAL AND CONFIDENTIAL

To: Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud

CC: Mr. Roger Milliken

FROM: K. M. Lowry

Subject: Mill Visits for Prospective Graduates from I. T. T.

In accordance with the discussion at our meeting at Drayton yesterday, the I. T. T. boys who are visiting the mills next week will be assigned as follows:

Philip A. Dargie	Gainesville
Lewis C. Doggett	Monarch
William C. Harris	Gaffney
Robert S. Kenyon	Excelsior Union
Frederick P. McKenna	Excelsior Finishing
Marvin C. Robinson, Jr.	D.M.I.E.D.
Charles G. Tewksbury	Abbeville
Raymond W. Thomas	Monarch

It was also agreed that we will offer these boys an annual salary of $5,000.

General Counsel Exhibit F-12

The scedule for the visits will be as per my memorandum of February 14th.

Mr. C. R. Chute, who is on the staff at I. T. T., is planning to accompany these boys.

KML/bjb

KML

General Counsel Exhibit F-15

DATE: July 30, 1955

TO: Mr. Marion Beacham
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

FROM: Roger Milliken

This morning I have been talking with Ken Lowry and have asked him to find out while I am away what is the status of the different projects that each of you is working on for presentation to the whole group so that we can plan to have a meeting as soon as possible to take advantage of the recommendations that will have developed as a result of the tests that each of you is making.

In going over the list that I have, it seems that there are a great many things to be covered and it may be that instead of trying to do it all at one meeting, we will plan to have two—particularly as I suspect some of the projects are not ready yet for reporting. He will be getting in touch with you sometime within the next two or three weeks to collect this information, and based on what he finds, we will get together the end of August to set up a date as to when this meeting should be.

R. M.

e.

General Counsel Exhibit F-15

October 18, 1955

Mr. W. A. Goodwin
H. E. Moss

Control Roll on 45" Cards

I have your letter asking if we have ever had any experience covering the installation of a control roll on a card to improve neps and reduce checking. The only work that I know of which has been done along this line was a series of studies conducted at Drayton Mills by "K" Shannon. This work was done in conjunction with the program to develop recommendations for the type of machinery which should be purchased by Deering Milliken. Drayton Mill was assigned the carding operation and they may have done some work along the lines in which you are interested.

I would suggest that you contact both Raymond Owings at Drayton and "K" Shannon at Monarch Mill to see if they have any information which would be of value to you.

HEM/cm

General Counsel Exhibit F-16

March 21, 1955

Mr. C. M. Hubbard
H. E. Moss
M. T. M. Course for Darlington

Dear Clark:

Felix and I plan to be in Hartsville Wednesday evening as we have an appointment with Mr. Oeland at Darlington the following day.

As you suspected, Mr. Oeland has already heard of your management training program at Hartsville and has asked when Darlington is to be included. He, of course, pointed out that his training classes have already been twice scheduled only to be cancelled.

It seems reasonable that we consider spending two additional weeks at Darlington after your work at Hartsville is completed. This, then, amounts to a four-week period in the Darlington-Hartsville area, which should provide ample time for conducting training classes at both mills, as well as completing the industrial engineering department audits at both mills.

Will you please give this matter your consideration and be prepared to discuss it with me Wednesday evening?

HEM/bjb

HARRY

General Counsel Exhibit F-17

Deering Milliken Service Corporation
INDUSTRIAL ENGINEERING DEPARTMENT

February 5, 1955

To: Abbevjlle, Mr. W. F. Umstaedter - CC:

Cowan, Mr. Philip Byfield
Darlington, Mr. W. S. Hawkins
Drayton, Mr. R. C. Owings
Dutchess, Mr. T. J. Fox
Exc. Union, J. T. Wardlaw
Exc. Rutherfordton, Mr. R. H. Jones
Hatch, Mr. George Hemphill
Exc. Clemson, Henry D. Ott
Exc. Finishing, Mr. W. A. Carter
Gaffney, Mr. W. J. Fagan
Gayley, Mr. Harold Lewis
Gerrish Milliken, Mr. John Buice
Hartsville, Mr. J. A. Garner
Johnston, Mr. F. D. Hill
Judson, Mr. J. C. Gray
Kingsley, Mr. J. W. Curtis
Laurens, Mr. B. C. Moore
Lockwood, Mr. T. E. Peterson
Lockhardt, etc., Mr. R. N. Yantis
McCormick, Mr. W. T. Mundy, Jr.
Pacolet 3 & 5, Mr. J. F. Richie
Pacolet 4, Mr. Milton Christman
Pacolet 6, Mr. J. E. Allen
Mr. Randolph Brandt
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. J. J. Norton
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud

Mr. C. E. Anderson, Exec. Union
Mr. George Asnip, Laurens
Mr. J. M. Bailey, Judson
Mr. G. D. Baker, Pacolet 4
Mr. M. W. Beachum, Exc. Union
Mr. D. I. Beal, Farnsworth
Mr. S. J. Craig, Jr., Hatch
Mr. A. D. Damon, Dufchess
Mr. L. C. Ellis, Monarch
Mr. J. A. Ferguson, Lockhart
Mr. L. J. Fisher, Jr., Gerrish Milliken
Mr. W. F. Garth, Pacolet 6
Mr. E. H. Hines, Jr., Exc. Finishing
Mr. C. T. Holland, Pacolet 3 & 5
Mr. J. M. Jackson, Gaffney
Mr. R. H. Jones, Exc. Rutherfordton
Mr. W. S. Manning, Gayley
Mr. Joe Meehan, Farnsworth & Cowan
Mr. T. E. Peden, Johnston
Mr. H. L. Pratt, Jr., Ottaray
Mr. H. B. Risher, Exc. Finishing
Mr. H. F. Staples, Lockwood
Mr. G. G. Simmons, Drayton
Mr. F. A. Thompson, McCormick
Mr. W. E. Thrailkill, Kingsley
Mr. A. C. Wiesner, Cowan

General Counsel Exhibit F-17

FROM: Clark M. Hubbard, D.M.I.E.D.

SUBJECT: Time Study Training Course

A number of mills have asked that another course be conducted by this department in the principles of time study for industrial engineering trainees.

This course will cover fifteen days of training, consisting of rating, watch reading, calibration of time studies, job assignment determination, and maintenance of standards. We plan to conduct this course three weeks, beginning February 28, 1955. The fee will be $150 per man for the fifteen days of training. We would like to be advised by February 16th the names of the men who plan to attend this course. The location for the course will be selected after we have received the reservations.

CMH/bjb

General Counsel Exhibit F-18

DEERING MILLIKEN SERVICE CORPORATION

INDUSTRIAL ENGINEERING DEPARTMENT

Date: March 30, 1956

To: Messrs. Asnip, E. O. DeFore, R. C. Edwards, J. A. Meehan, J. J. Norton, Jr., J. M. Oeland, I. S. Pitts, A. B. Sibley,

FROM: W. A. L. Sibley, M. C. Stone
Copies to: Mr. Roger Milliken
K. M. Lowry

SUBJECT: Work Simplification Conferences

At our last Management and Development Committee Meeting, we discussed the Work Simplication Conferences, held by Allan H. Mogensen, at Lake Placid and Sea Island. A number of you have attended these conferences and everyone I have talked with felt that they were well worthwhile.

As you know, the Lake Placid Conference is six weeks and cost $3,000. The Sea Island Conference is for two weeks and the cost is $1,150. I am attaching, hereto, Mr. Mogensen's latest booklet and wonder if you would like to consider sending any of your men to the six-weeks course. We have tentatively reserved two places and I would suggest that you let me know as soon as possible so that we can make the necessary reservations. The Sea Island course will not be held again until the first of next year, so we do not have to do anything about reserving places for this one at this time.

KML/bjb
Attach.

General Counsel Exhibit F-20

Deering Milliken Service Corporation

INDUSTRIAL ENGINEERING DEPARTMENT

August 16, 1956

To: Mr. George Asnip
Mr. J. M. Bailey
Mr. E. O. DeFore
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone

cc: Mr. Roger Milliken

FROM: K. M. Lowry

You received recently from Anne Ebersbach a copy of a poster that was being put out at Burlington. I think this points out to us the absolute necessity of doing a thorough selling job on any change that is being made in our work assignments. Apparently, Burlington is not doing a thorough selling job and it is starting to backfire. If we do the proper job of explanation when we have a change, I am confident that we will not have this same difficulty.

General Counsel Exhibit F-20

I would like to suggest that you review your procedures with your Industrial Engineering Department and your supervision, so that you can assure yourself that all changes will be handled properly.

If you would like any assistance from us in this regard, please let me know.

KML

KML/bjb

General Counsel Exhibit F-21

Deering Milliken Service Corporation
INDUSTRIAL ENGINEERING DEPARTMENT
P. O. Box 1698—Greenville, S. C.

Copies: Mr. T. D. Truluck
Mr. Wallace Storey

DATE: February 8, 1956

TO: Mr. J. M. Oeland
Mr. J. J. Norton
Mr. I. S. Pitts
Mr. W. A. L Sibley
Mr. G. G. Simmons

FROM: Bruce B. White

SUBJECT: *Central Warehouse*

Messrs. Truluck and Storey and I met yesterday to discuss the possibilities of a central warehouse for your mills, the thought being that incoming cotton for this group of mills would be received at the central warehouse where it would be classed and tagged. The cotton would either be stored at this warehouse until needed by the mill, or temporarily stored several days before being re-shipped to the designated mill.

We are of the opinion that considerable savings would be realized by having all of your cotton weighed, classed, and tagged at a central warehouse, so that when it is received by you it would only have to be stored, thereby eliminating the need for your outside crews to do any sampling and tagging.

Mr. Truluck has been in touch with Mr. Milliken and we have been asked to make a preliminary report showing

what savings would be realized and the approximate cost for such an operation. In order for us to complete this study, there are certain data which we would like to receive from you, as follows:

1. Schedule of outside storage for 1955.
2. Outside warehouse fees for 1955.
3. Additional insurance which was necessary during 1955 for outside cotton storage.
4. Any switching charges or extra handling involved between the mill and outside storage warehouses for 1955, and
5. Demurrage on cotton cars for 1955.

Since the mills would not be required to sample, temporarily store, and tag cotton by using a central warehouse, we feel that it would be possible for you to reduce your handling crews. Therefore, in addition to the information requested above, we would also like to know how many men you could eliminate from your outside crews through having this done at a central warehouse and their hourly rate of pay.

We are most anxious to get this information to Mr. Milliken as soon as possible, and would appreciate your letting us have it at your earliest convenience.

B B B/bjb

BBW/bjb

General Counsel Exhibit F-22

February 10, 1956

Mr. Bruce B. White
Industrial Engineering Department
Greenville, S. C.

Subject: Central Warehouse

Dear Bruce:

I am hastening to reply to your letter of February 8th as I will have to be out of town a good part of the next ten days. The answers to the questions raised are as follows:

1. Schedule of outside storage for 1955. None
2. Outside warehouse fees for 1955 None
3. Additional insurance which was necessary during 1955 for outside cotton storage None
4. Any switching charges or extra handling involved between the mill and outside storage warehouses for 1955, and
5. Demurrage on cotton cars for 1955

It would be my estimate that if we could have the proper mix of cotton furnished us without the necessity for storing and stacking we could possibly cut off two of the five men presently in the shipping department. Saving on these two men would run around $96.00 per week.

Very truly yours,

J. M. Oeland
Treasurer

mo/m
cc: Mr. T. D. Truluck
Mr. Wallace Storey
Mr. W. A. Goodwin

General Counsel Exhibit F-23

Deering Milliken Service Corp.

INDUSTRIAL ENGINEERING DEPARTMENT
P. O. Box 1698—Greenville, S. C.
March 26, 1956
CC: Mr. J. A. MacArthur

To: Mr. T. D. Truluck

FROM: Bruce B. White

SUBJECT: Central Warehouse

In accordance with your request, Alex MacArthur and I have worked up data showing what the picture would have been if we had had a central warehouse during the year 1955. This has been done showing what the revenue would have been to the warehouse if Darlington, Drayton, Gaffney, Hartsville, Judson, and the Monarch Group had been using it last year.

We are attaching two schedules to this memo, Schedule I, Central Warehouse Revenue and Schedule II, showing Net Savings by Mills. Taking into consideration the total savings by mills and the net revenue to the central warehouse, before taxes, the net return would have been 45.9%. The return, based on warehouse revenue only for an expenditure of $466,000, before taxes, would have been 9.4%. It should be pointed out that this is only the cotton storage and no cloth has been considered. Also, no additional cotton storage was considered and no bonded storage.

It will be noted that the return of 45.9% is based on processing all of the cotton through the central warehouse

for the listed mills, which was 143,750 bales for 1955. In our preliminary report, it was estimated that 100,000 bales would be processed through the warehouse annually; therefore, by using the figure of 143,750 for bales processed, our return increased.

BBW/bjb
Enclosure

General Counsel Exhibit F-24

File

[Letterhead of]

DARLINGTON MANUFACTURING COMPANY

DARLINGTON, SOUTH CAROLINA

March 15, 1956

Mr. K. M. Lowry
Box 1698
Greenville, S. C.

Dear Ken:

In line with Mr. Milliken's letter of March 10th calling our attention to importance of setting proper job assignments on the purchase of new machinery and improvements on machinery we have in place, we are writing to say that we will appreciate your help and advice as outlined in this letter. We are listing below changes or contemplated changes that should have your attention as far as job assignments and inspection:

1. Twenty-seven Whitin frames equipped with pneumafil, large package creels on filling.
2. Thirty-two Saco-Lowell 1923 filling frames now being equipped with pneumafil, and large package creels.
3. Ninety-six warp spinning frames to be equipped with pneumafil this year, 16 with large package creels.
4. Lap conveyor over cards.
5. 15x42" and 17x42" drawing change-over.

General Counsel Exhibit F-24

6. Five 12x6½ Whitin roving frames.
7. Eighty-four 50" XD looms to be put in third and fourth quarter this year.

In addition to the above we are putting 26" loom beams on 464 40" E model looms replacing 18" and 20"; conveyor for hauling warp yarn from spinning to spooling room; conveyor for taking warp beams from spooler room to slasher room, and 38" warper beams with two new Barber-Colman warpers for handling.

We will apreciate it if Mr. Lowry will have someone from D.M.I.E.D. to work out with Mr. Hawkins a program for carrying out the suggestions in Mr. Milliken's letter.

Very truly yours,

J. M. OELAND
J. M. Oeland
Treasurer

cc: Mr. Newton
Mr. Milliken
Mr. Goodwin
Mr. Hawkins

General Counsel Exhibit F-25

Mr. J. M. Oeland March 27, 1956

H. E. Moss

I have your letter of March 15th to Mr. Lowry asking that someone from our office work with Mr. Hawkins in the development of proper job assignments for new machinery.

Both Mr. Lowry and I plan to visit your mill in the near future and will, at that time, review a program designed to insure the development and installation of job assignments which will be current with the installation of new machinery and auxiliary equipment.

We will get in touch with you later to let you know the time of our visit.

HEM/bjb

General Counsel Exhibit F-26

Date: April 14, 1955

To: Mr. Clark Hubbard

From: W. S. Hawkins

Subj: Battery Hands

I wouuld appreciate your sending to me the Battery Hand Manual as prepared by your department for Monarch Mill, Lockhart Plant.

It is my understanding that we are at liberty to install this job at Darlington.

WSH/bbw
cc? File

General Counsel Exhibit F-27

Mr. W. S. Hawkins November 17, 1955

Clark M. Hubbard

Mr. Lowry has referred your letter of November 14th to me.

With reference to your study of spinner and doffer jobs. I can plan to work with you as soon as the supervisors' check list has been completed.

I will contact you next week and schedule a date for my visit to Darlington.

CMH/bjb

General Counsel Exhibit F-28

STANDARD SURVEY

—SUMMARY—

Date May 9, 1956

Mill Darlington
Department All

Page No.	Department	Measured	Time Req'd. Man-Days	Comments
1	Card Room		165	
2	Preparation		155	
3	Spinning		165	
4	Weaving		230	
5	Cloth Room		105	
	GRAND TOTAL MAN-DAYS REQ.'D.		820	
	TOTAL MAN-YEARS REQUIRED		3.28	

General Counsel Exhibit F-28

STANDARD SURVEY

Date May 9, 1956

Mill Darlington
Department Card Room

Job No.	Job Title	Measured	Time Req'd. Man-Days	Comments
1 2	Opener Tender Picker Tender	yes yes	15-A	(Lap Handling) Manual—Sept. 1953, Rev. 1955
3	Card Tender	yes	30-A	No Manual—must be restudied
7 7	Breaker Drawing Tender Finisher Drawing Tender-Roving Tend.	yes	20-A	March 5, 1956—all data and rate-manual
9	10 x 5—1.81	yes	0-A	No manual
8	12 x 6—1.10	—	20-A	Studied but no rate
18	Second Hand			
5	Card Grinder	no	5-C	
16	Maint. Man	no	5-C	
4	Card Stripper	yes	10-A	No manual—to be restudied in conj. card tender
11	Section Man	no	5-C	
10	Creeler	yes	25-A	no manual-must be restudied
12	Sweeper	yes	20-A	no manual-must be restudied
17	Overhauler	no	5-C	
6	Overhauler Helper	no	5-C	
21	No Job	—	—	
	TOTAL MAN-DAYS REQUIRED		165	

General Counsel Exhibit F-28

STANDARD SURVEY

Date May 9, 1956

Mill Darlington

Department Preparation

Job No.	Job Title	Measured	Time Req'd. Man-Days	Comments
-53	Spooler Tender	yes	0-A	Sept. 1954—job installed. Revised weekly in accordance with pkg. wts. and tailings.
57	Warper Tender	yes	10-A	Mar. 24, 1954—Nov. 1955—revised
63	Slasher Tender	no	15-B	
65	Tie-in Hand	no	30-A	Complete restudy due to portable tie-in machine job studied—not installed
67	Head Draw-in Hand	no	5-B	—Probably be studied together
68	Draw in Hand	no	25-A	
51	Section Man (spool.)	no	5-C	
51	Section Man	no	5-C	
54	Warper Creeler	no	0-A	Job studied—not installed
52	Yarn Man	no	15-B	
56	Tailing Hand	no	10-B	
61	Slasher Foreman—1st	no	5-C	
62	Slasher Fore.—2d & 3rd	no	5-C	
—	Spooler Cleaning & Overhaul	no	-B	Eliminated
—	Slasher Cleaning	no	-B	Eliminated
69	Harness Builder	no	15-B	Might be classified as "C"
66	Tie-in Helper	no	10-B	Studied with "tie-in man"
—	Yarn Hauler	yes	0-B	May 1956—last revision
	TOTAL MAN-DAYS REQUIRED		155	

General Counsel Exhibit F-28

STANDARD SURVEY

Mill Darlington Date May 9, 1956

Department Spinning

Job No.	Job Title	Measured	Time Req'd. Man-Days	Comments
31-33 42	Spinner	yes	30-A	Nov. 1949—Manual Must be restudied
34	Second Hand	—	—	
21	Section Man	no	5-C	
28	Section Oiler	no	5-C	
35-38, 47, 49	Doffer	yes	30-A	Filling Doffer—Apr. 1956 Revision—Nov. '52 Man Warp Doffer—Nov. '55—Revision—Sept. '53 Man Must be restudied
22	Overhauler	no	5-C	
23	Overhauler Helper	no	5-C	
24	Oiler-Taper	no	30-A	
26	Roving Hauler	yes	20-A	Apr. 1953—Manual—No revision Must be restudied
29	Roving Hauler-Sweeper	yes		
25	Sweeper	yes	20-A	Apr. 1953—Manual—No revision Must be restudied
39	Frame Cleaner	yes	15-A	Additional work necessary before put in—Must be restudied—no manual
41	Traveler Changer	yes	0-C	
40	Spindle Cleaner	yes	0-C	
	TOTAL MAN-DAYS REQUIRED		165	

General Counsel Exhibit F-28

STANDARD SURVEY

Mill Darlington Date May 9, 1956

Department Weaving

Job No.	Job Title	Measured	Time Req'd. Man-Days	Comments
92	E—Weavers	yes	30-A	Mar. 1953—Manual—Rev.—Jobs up-to-date by current loom stops
93-94	X—Weavers	yes	30-A	Feb. '52 — Manual -- Rev. — 50" looms & large loom beams entail complete restudy
71	Second Hand	no	—	
72	Loom Fixer	no	5-C	
88-91	Battery Hand	no	30-A	
73	Smash Hand	no	15-B	
74	Warp Man	yes	20-A	Manual out of date—complete restudy necessary Aug. 1954—No Revision
84-"E" 85-"X"	Cloth Doffer	no	10-A	Job studied—not installed
75	Quill Hauler Grate Cleaner	no	15-A	Job studied—not installed
80-81	Oiler	no	20-A	
82	Sweeper	yes	10-A	No manual
76-77	Quill Stripper	no	10-A	
87	Change Man	no	5-C	
78	Blow-off	yes	10-B	
83	Overhead Cleaner	no	10-B	
79	Harness Cleaner	yes	10-B	
	TOTAL MAN-DAYS REQUIRED		230	

General Counsel Exhibit F-28

STANDARD SURVEY

Mill Darlington

Date May 9, 1956

Department Cloth Room

Job No.	Job Title	Measured	Time Req'd. Man-Days	Comments
101-102	Second Hand Invoicer	no	5-C	
103	Stitcher	no	10-B	
104	Inspector	no	30-A	
105	Folder	no	10-B	
106	Grader	no	15-B	—In addition to grader.
107	Seconds Grader	no	5-B	—In addition to grader.
108	Press	no	10-B	
109	Learners	no	—	
110 111	Clerk Grader	no	5-C	
112	Conveyor Tender	no	15-B	
	TOTAL MAN-DAYS REQUIRED		105	

General Counsel Exhibit F-29

Deering Milliken Service Corporation
Industrial Engineering Department
P. O. Box 1698
Greenville, S. C.

November 18, 1954

To: Mr. Randolph Brandt
Mr. E. O. DeFore
Mr. E. C. Edwards
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud

FROM K. M. Lowry

CC: Mr. H. F. Staples
Mr. A. D. Damon
Mr. W. A. Newton
Mr. W. B. Hill
Mr. J. M. Jackson
Mr. F. P. Mullendore
Mr. D. R. Arrowood
Mr. J. M. Bailey
Mr. G. G. Simmons
Mr. George Asnip
Mr. L. J. Fisher, Jr
Mr. W. S. Manning
Mr. W. E. Thrailkill
Mr. L. C. Ellis
Mr. H. L. Pratt, Jr.
Mr. J. A. Ferguson
Mr. C. T. Holland
Mr. George D. Baker
Mr. Winston Garth
Mr. M. W. Beacham
Mr. C. E. Anderson, Jr.
Mr. R. H. Jones
Mr. S. J. Craig, Jr.
Mr. E. H. Hines
Mr. H. B. Risher
Mr. T. E. Peden
Mr. F. A. Thompson
Mr. J. A. Meehan
Mr. D. I. Beal
Mr. Roger Milliken

General Counsel Exhibit F-29

SUBJECT: Quarterly Job Assignment Savings Report

In the past, the mills have reported to this department savings affected each quarter for discussion in the quarterly treasurers' meeting. Also reported was the mill hourly employees on measured standards.

It has been decided to discontinue these reports; however, it is suggested that each mill continue to maintain a record of savings and work measurement coverage to discuss with Mr. Milliken on his regular visits to the mills.

We are attaching hereto a summary of reported savings for the past year by quarters and mill hourly employees on measured standards.

In order to more thoroughly cover the activity and progress of the Industrial Engineering Departments, we have been asked to develop a program to systematically review each mill's Industrial Engineering operating procedures and program. This review is to stress compliance with standard procedures such as:

1. Time Study Techniques
2. Method Time Measurement
3. Incentive Payment Procedures
4. Standards Manuals Preparation
5. Standards Maintenance and Follow Up Procedures
6. Programing and Goals

As soon as the procedure for auditing the Industrial Engineering activities is complete, we plan to visit each mill for review.

CMH/cm

KML

General Counsel Exhibit F-30

Industrial Engineering Department
Deering Milliken Service Corporation
P. O. Box 1698 — Greenville, S. C.

August 29, 1955

To: Mr. E. O. DeFore
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

CC: Mr. R. H. Bush
Mr. H. C. Byrd
Mr. Harry DeFore
Mr. Roger Milliken
Mr. R. B. Newton
Mr. S. L. Smith
Mr. T. D. Truluck

FROM: K. M. Lowry

In reference to Mr. Milliken's letter of August 25th regarding the specific goals and recommendations for our meeting on October 11th, we have discussed this with some of the Treasurers and it was felt that rather than try to develop goals for every process in the mills it might be better to concentrate on specific operations. In order to cover the jobs having the highest number of employees, it was felt that we should concentrate on spinners, doffers, weavers, fixers, and battery tenders.

We will be contacting you very shortly to work with you on getting up your present assignments and getting factual information about competitive assignments so that you may set your goal.

KML/bjb

KML

General Counsel Exhibit F-31

File

DEERING MILLIKEN SERVICE CORPORATION
INDUSTRIAL ENGINEERING DEPARTMENT

DATE July 9, 1956

COPIES TO:
Mr. J. M. Oeland
Mr. W. A. Goodwin

TO: Mr. W. S. Hawkins
FROM: Clark M. Hubbard
SUBJECT: Standard Maintenance Audit
Roving Tender—Darlington

From an audit of your 10 x 5 roving tender job, running 1.80 hank roving, it was found that the operator was performing *2.73% more work than called for in the standard.*

A total of 205 demerits were assigned for the following variances:

Break Work—The audit indicated that a variance in frequency amounted to a 22% reduction in break work.

Doff Work—The work content of doff work was reduced by the change of one cleaning element to daily work. The doff package weight has been reduced to such an extent that it offsets the reduction in work content of all elements.

Cleaning Work—Five of the ten cleaning elements have changed in either frequency or the addition or deletion of elements.

Covering Manual—Sufficient changes have been made since the manual was written, to necessitate a complete review to make the manual current.

CMH/bjb

Encl.

General Counsel Exhibit F-1

STANDARDS MAINTENANCE AUDIT Roving Tender - 10 x 5

Mill: Darlington
Date: July 7, 1956
Job Title: CMH, WL
Audited By: (DMIED)
Reviewed By: WH (Mill)

Administration:

Item	Demerit Range	Mill Demerits	Comments
A. Covering Manual 1. Complete & Current	0-100	75	Manual needs complete review to be current. This will be done when job is retarded for heavy bank for Sing Roth changeover.
B. Method of Payment 1. Reflect Performance	0- 50		
C. Non-Standard Policy 1. Downtime 2. Non-Incentive Time 3. Under-Assignment	 0- 30 0- 30 0- 30		
D. Allowances 1. Personal & Fatigue 2. Miscellaneous	 0- 30 0- 30		
Totals	300	75	

Work Content:

Item	Demerit Range	Mill Demerits	Comments
A. Break Work 1. Frequency 2. Methods	85	20	The audit indicated a 22% reduction in break work. To be gotten with restudy of job. Highly value
B. Creel Work 1. Frequency 2. Methods	95	0	
C. Doff Work 1. Frequency 2. Methods	340	75	Clean bottom clearers changed from doff to daily work. Pounds/doff [illegible] reduced from 1.625 to 1.375.
D. Cleaning Work 1. Frequency 2. Methods	75	35	Changes in frequency of cleaning and addition and deletion of elements
E. Patrol and Inspect 1. Frequency 2. Methods			
F. Materials Handling 1. Frequency 2. Methods			Will review with Bill H.
G. Maintenance 1. Frequency 2. Methods			
H. Miscellaneous 1. Frequency 2. Methods	5	0	
Totals	600	130	

Mechanical and Operating:

Item	Demerit Range	Mill Demerits	Comments

Counsel Exhibit F-1

1. Reflect Performance	0- 30		Stay both changeover.
C. Non-Standard Policy			
1. Downtime	0- 30		
2. Non-Incentive Time	0- 30		
3. Under-Assignment	0- 30		
D. Allowances			
1. Personal & Fatigue	0- 30		
2. Miscellaneous	0- 30		
Totals	300	75	

Work Content:

Item	Demerit Range	Mill Demerits	Comments
A. Break Work 1. Frequency 2. Methods	85	20	The audit indicated a 22% reduction in break work. To be gotten with restudy of jobs. Highly value
B. Creel Work 1. Frequency 2. Methods	95	0	
C. Doff Work 1. Frequency 2. Methods	340	75	Clean bottom clearers changed from doff to daily work. Rounds/doff ~~[illegible]~~ reduced from 1.625 to 1.375
D. Cleaning Work 1. Frequency 2. Methods	75	35	Changes in frequency of cleaning and addition and deletion of elements
E. Patrol and Inspect 1. Frequency 2. Methods			
F. Materials Handling 1. Frequency 2. Methods			Will review with Bill H.
G. Maintenance 1. Frequency 2. Methods			
H. Miscellaneous 1. Frequency 2. Methods	5	0	
Totals	600	130	

Mechanical and Operating:

Item.	Demerit Range	Mill Demerits	Comments
A. Speeds			
1. 0-5% Change	0- 25	0	
2. Over 5% Change	0- 50		
B. Settings			
1. 0-10% Change	0- 25	0	
2. Over 10% Change	0- 50	0	
Totals	100	0	
Grand Total	1,000	205	

15

OVERALL STANDARDS VARIANCE (%). 2.73%

General Counsel Exhibit F-32

PERSONAL AND CONFIDENTIAL

INDUSTRIAL ENGINEERING DEPARTMENT
Deering Milliken Service Corporation
P. O. Box 1698—Greenville, S. C.

August 2, 1956

To: Mr. George Asnip
Mr. J. M. Bailey
Mr. E. O. Defore
Mr. J. A. Meehan
Mr. J. J. Norton
✓ Mr. J. M. Oeland
Mr. I. S. Pitts
Mr. W. A. L. Sibley
Mr. A. B. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone

FROM: K. M. Lowry

SUBJECT: Salary Basis for Second Hands

As you recall at our Treasurers' Meeting at Drayton on Tuesday, July 17th, there was a discussion regarding paying "second hands" or, as they are now called in many cases, "assistant overseers" on a salary basis. The question arose as to what the pension plan cost would be and if there would be any cost for prior service.

Since that time, I have been in touch with Ivins, Phillips & Barker and am attaching, hereto, a copy of Fleming Bomar's letter to me. You will note that under our present plan, there are three requirements to be met, as follows:

(1) The employee must be classified as a salary employee on the entry date.

General Counsel Exhibit F-32

(2) The employee must have been continuously employed by the company as a salaried employee for at least two years on such entry date.

(3) The employee must have attained the age of 30 and must not have attained the age of 55 on or prior to such entry date.

This means that unless we revise our plan, the "second hand" would not be eligible to join the plan until he had been on a salary basis for two years. We would then have to pay the past service benefit for the first two years during which he was employed on a salaried basis.

In order for us to accurately determine what our additional pension plan cost would be, we need to have certain information from your mills for all employees whom you would consider changing to this salary basis. We will then send this to our actuary and have the cost computed by mills. Attached are two copies of a form to be used in compiling this data for each of your mills. We would appreciate your giving these forms to the proper individuals in your organization, having them filled out, and return one copy to me in an envelope marked "PERSONAL AND CONFIDENTIAL". The extra copy is for the mill's file if desired.

Would you, also, please indicate whether or not you would want to consider trying to have the plan ammended so that it could be for two years of employment for eligibility, rather than two years as a salaried employee. This change in the plan would be necessary if the "second hands" in question are to be permitted to join the plan as of December 1, 1956. You will also note what Mr. Bomar points out regarding having all "second hands" on the same basis of compensation.

Even if you are not in favor of making a change, will you please have the attached forms completed and returned to us so that the cost may be computed for our entire organization in time for our meeting early in September. You will recall that we were asked to have this information ready not later than September 10th, so we would appreciate having the completed forms in this office not later than August 17th.

KML/bjb

KML/bjb

Encls.

General Counsel Exhibit F-23

[Letterhead of]

LAW OFFICES OF

IVINS, PHILLIPS & BARKER
SOUTHERN BUILDING, 15TH & H STS., N.W.
WASHINGTON 5, D. C.

July 18, 1956

Mr. Kenneth Lowry
Judson Mills
Greenville, S. C.

Re: Deering Milliken Mills Retirement Plan

Dear Ken:

I hope that I have sent this letter to the correct address in view of the corporate reorganizations in which both you and your employer have been involved. I would appreciate it if you would acknowledge receipt of the letter by return mail in order that I may be certain it reached you.

Section 3.02 of the Deering Milliken Mills Retirement Plan provides that every employee ineligible to join the plan when it first commenced and every new employee of the company must meet three requirements in order to become a participant on any future entry date:

1. The employee must be classified as a salaried employee on such entry date.

2. The employee must have been continuous employed by the company *as a salaried employee* for at least two years on such entry date.

3. The employee must have attained the age of 30 and must not have attained the age of 55 on or prior to such entry date.

General Counsel Exhibit F-32

Accordingly, if the management of one of the Deering Milliken mills decides to change the basis of compensating "second hands" from an hourly rate to a salaried basis, it would be necessary for such second hands to wait two years prior to entering the plan. However, when such a second hand does become eligible to join the plan he would be entitled to a past service benefit for the first two years during which he was employed on a salaried basis. No past service benefits would be provided for years of service when the employee was not paid on a salaried basis.

The plan could be amended to require two years of employment as a prerequisite to eligibility rather than two years of employment as a salaried employee. Such a change would be necessary if the second hands in question are to be permitted to join the plan as of December 1, 1956.

If the basis of compensation of any second hand is changed from an hourly rate to a salaried basis, it is my opinion that the basis of compensating all second hands should be changed in the same manner. Otherwise, in addition to the dissatisfaction caused among employees performing the same job, the Internal Revenue Service, if all facts were known, would have a reasonable ground for arguing that the plan was operated on a discriminatory basis.

I trust that I have answered the questions raised in our telephone conversation, but if not please let me know.

Sincerely yours,

FLEMING BOMAR

General Counsel Exhibit F-33

DEERING MILLIKEN SERVICE CORPORATION

INDUSTRIAL ENGINEERING DEPARTMENT

To: Mr. J. M. Oeland DATE May 24, 1956

FROM: K. M. Lowry COPIES TO:

SUBJECT: *Standard Cost System*

During our recent visit to your mill, we reviewed, in considerable detail, the principal factors necessary to the development and installation of a standard cost system. During our discussion, the following program was planned:

Industrial Engineering Department

A survey completed May 9, 1956 indicated that 3.28 man years of industrial engineering work would be necessary to determine direct and indirect labor standards required for the standard cost system. In reviewing your present industrial engineering department personnel, we decided that this department's organization should be developed along the lines shown on the attached organization chart. Examination of this chart will indicate that you presently need two additional industrial engineers and in line with our discussion, you will plan to employ personnel for these openings as soon as possible. We feel that this industrial engineering organization, when developed for Darlington, will be able to complete and maintain a comprehensive program. We also feel that once this organization is developed, it should be continually maintained by making sure that when a man is transferred, a trainee is already on hand to fill the vacancy.

As the industrial engineering department is developed, it will be possible to determine direct and indirect labor

standards outlined in detail on the survey dated May 9, 1956 and we can then go ahead with other work necessary to the installation of the standard cost system.

You will remember that Mr. Sterling Smith discussed additional personnel which will be required to take care of cost and accounting functions necessary to this program. He will write to you concerning this sometime soon.

The preceding information has been submitted to confirm our understanding of the program which was decided upon when we were at your mill. We would appreciate hearing from you if you have any additional comments.

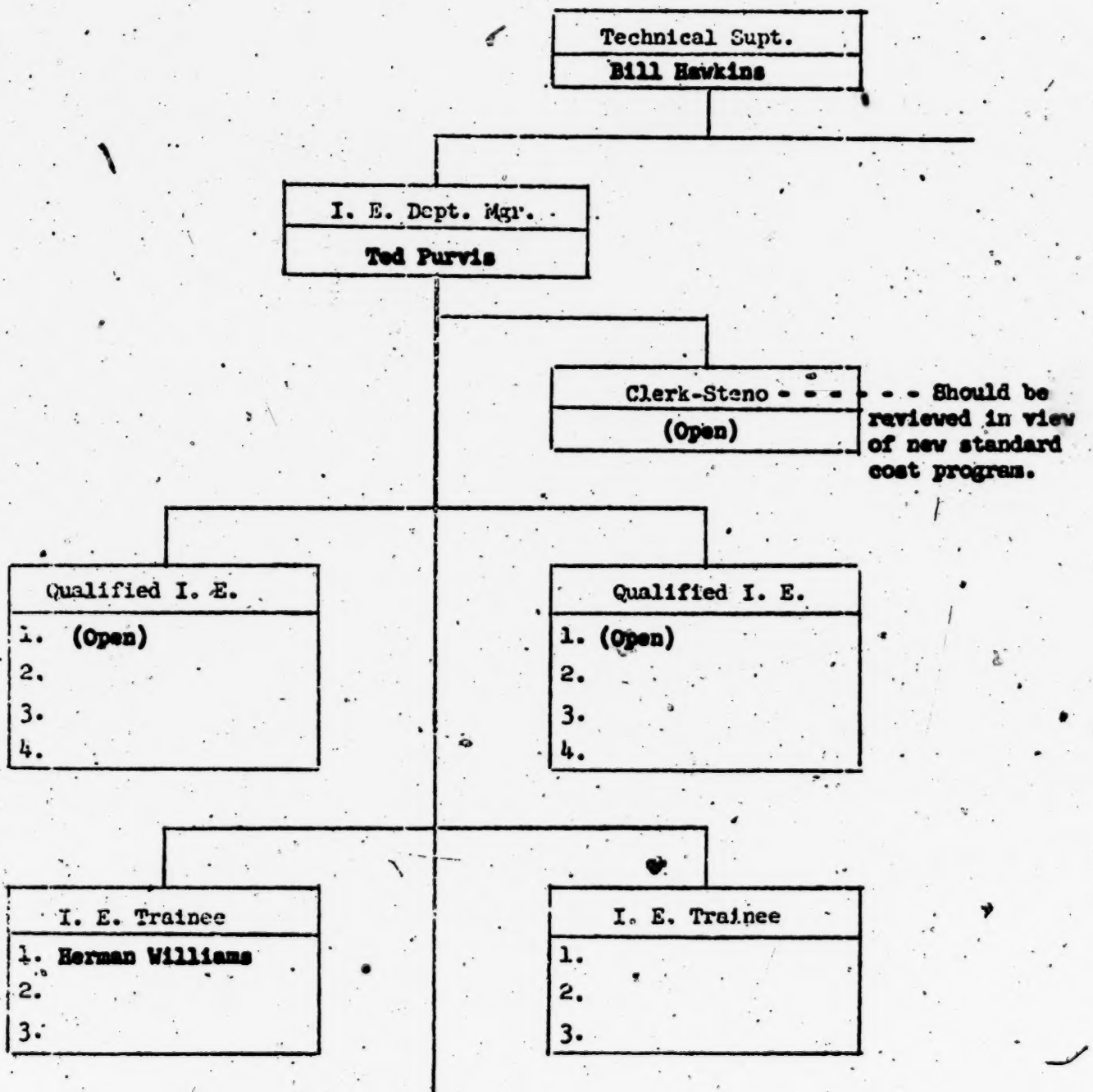
HEM/cm

Attach.

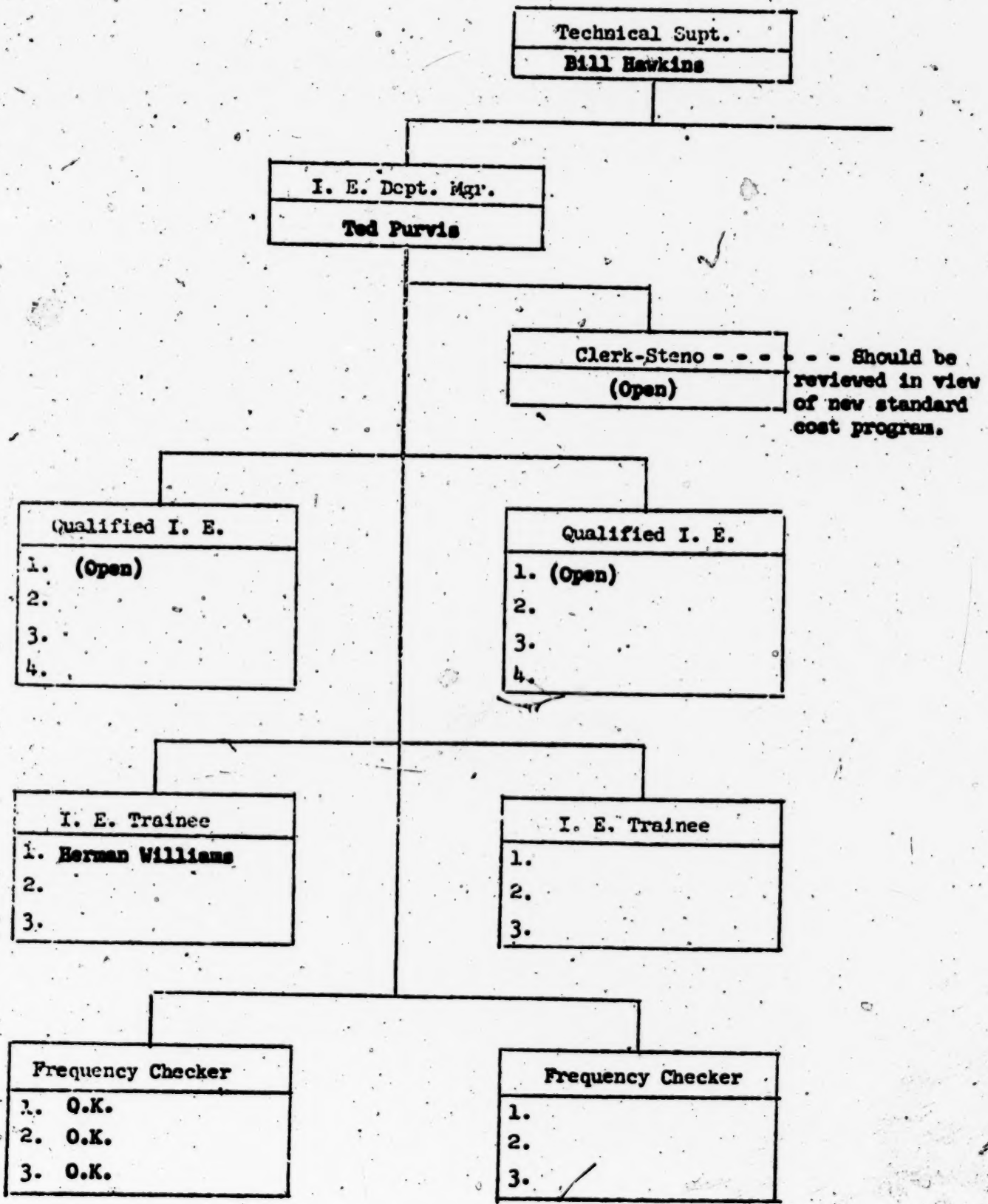
ORGANIZATION CHART

Industrial Engineering Department

DARLINGTON Mill



1475
General Counsel Exhibit F-33


Technical Supt.
Bill Hawkins
I. E. Dept. Mgr.
Ted Purvis
Clerk-Steno
(Open)
Should be revieved in view of new standard cost program.
Qualified I. E.
1. (Open)
2.
3.
4.
Qualified I. E.
1. (Open)
2.
3.
4.
I. E. Trainee
1. Herman Williams
2.
3.
I. E. Trainee
1.
2.
3.
Frequency Checker
1. O.K.
2. O.K.
3. O.K.
Frequency Checker
1.
2.
3.

Respondent's Exhibit F-1

SERVICE AGREEMENT

AGREEMENT made this 15th day of November, 1951 between DEERING MILLIKEN SERVICE CORPORATION (DMSC), a Delaware corporation having its principal office at Greenville, S. C., First Party, and DARLINGTON MFG. COMPANY, a South Carolina corporation having its principal office at Darlington, South Carolina, Second Party.

WHEREAS, DMSC has been organized to provide essential services to organizations engaged in the textile industry at the lowest practicable cost; and

WHEREAS, the Second Party is engaged in the textile industry, is a holder of capital stock of DMSC and is desirous of making the services of DMSC available to itself and to any mills operated by it.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. DMSC shall make available to the Second Party, various services and facilities from time to time provided by the following departments of DMSC:

(a) Purchasing Department;
(b) Cotton Purchasing Department;
(c) Cotton Waste Department;
(d) Yarn Department (including rayon waste sales);
(e) Textile Machinery Department;
(f) Engineering Department;
(g) Industrial Engineering Department;
(h) Cost Department;
(j) Placement Department;

and such other departments as may hereafter be established by DMSC.

Respondent's Exhibit F-1

2. The charges and assessments to be made to the Second Party for the services required by it hereunder shall be at cost to DMSC.

3. Each statement of DMSC for charges or assessments shall be paid within ten days from the date rendered.

4. Nothing herein contained shall require the Second Party to avail itself of the services of any particular Department or Departments of DMSC or prohibit the Second Party from contracting with any other person, firm or corporation for services of the same or a similar kind as those offered by any Department.

5. Nothing herein contained shall prohibit DMSC from offering the services of any or all of its Departments to any person, firm or corporation, whether or not such person, firm or corporation shall be a stockholder of DMSC; provided, however, that the charges to any non-stockholder shall not be less than the charges to the Second Party for services of the same or a similar kind.

6. This agreement may be terminated at any time by either party upon not more than sixty (60) and not less than forty (40) days' notice in writing. Upon termination, the Second Party shall surrender to DMSC certificates representing all shares of capital stock of DMSC held by the Second Party and shall receive therefore (a) the par value of such shares plus (b) the unused portions, if any, of all assessments theretofore paid by the Second Party, computed in accordance with the accounting practice regularly employed by DMSC or by the Department or Departments thereof on whose behalf such assessments had been made;

provided, however, that the Second Party shall pay on or before the effective date of termination all assessments theretofore made hereunder against the second party, prorated in accordance with the accounting practice regularly employed by DMSC or by the Department or Departments thereof on whose behalf any such unpaid assessments have been made.

7. No shares of stock of DMSC owned by the Second Party are transferrable, by operation of law or otherwise, without the written consent of DMSC.

IN WITNESS WHEREOF, this agreement has been executed at Greenville, S. C. as of the day and year above stated.

DEERING MILLIKEN SERVICE CORPORATION

By Alan B. Sibley

Darlington Mfg. Co.

By J. M. Oeland, Treas.

General Counsel Exhibit G 1

DATED March 31, 1955

COPIES TO:

ILLEGIBLE

FROM: James H. Higginbotham

SUBJECT: Roving Cans

Will you please advise how many 12 x 36 roving cans you need as we have a surplus within the organization. When advising, please state whether you want metal top and fibre lock band or roll top.

JHH:RC

General Counsel Exhibit G-2

DEERING MILLIKEN SERVICE CORPORATION

PURCHASING DEPARTMENT

P. O. Box 2327 Phone: 3-8341

Greenville, S. C.

January 6, 1955

To:
Mr. R. C. Edwards, Abbeyville
Mr. F. P. Mullendore, Darlington
Mr. G. G. Simmons, Drayton
Mr. Ernest DeFore, Clemson
Mr. C. E. Anderson, Union
Mr. R. H. Jones, Rutherfordton
Mr. Harold Risher, Finishing
Mr. J. J. Norton, Gaffney
Mr. L. J. Fisher, Gerrish Milliken
Mr. I. S. Pitts, Hartsville
Mr. S. J. Craig, Hatch
Mr. T. E. Peden, Johnston
Mr. Don Beal, Farnsworth
Mr. Arthur Wiesner, Cowan
Mr. J. M. Bailey, Judson
Mr. W. E. Thrailkill, Kingsley
Mr. George Asnip, Laurens.
Mr. Randolph Brandt, Lockwood
Mr. J. A. Ferguson, Lockhart
Mr. L. C. Ellis, Monarch
Mr. H. L. Pratt, Ottaray
Mr. Wm. R. Fiske, McCormick
Mr. C. T. Holland, Pacolet #3
Mr. George Baker, Pacolet #4
Mr. W. F. Garth, Pacolet #6

From: James H. Higginbotham

CC: Mr. H. C. Byrd
Mr. Kenneth Lowry
Mr. Russell Newton

Subject: Pick Counters

The Deering Milliken Service Corp. Revolving Fund has the following for sale:

204 Veeder-Root Reset 3 Shift Pick Counters

Before offering these outside the organization, we would like to know if any of the Deering Milliken mills have any interest. Please indicate your decision on the form below and return one copy to this office.

JHH:RC J H

To: James H. Higginbotham, DMSC Purchasing Department.

☐ Do not wish to purchase.

☐ Wish to purchase ..... after inspection.

☒ Have some interest, will check further and advise later.

Mill Darlington Mfg. Co.
Date 1/10/55
By F. P. Mullendore

General Counsel Exhibit G-4

PURCHASING DEPARTMENT

May 23, 1956

To:

Mr. Albert Stoudenmier—Abbeville
Mr. Donald I. Beal—Cowan & Farnsworth
Mr. W. A. Goodwin—Darlington
Mr. T. C. Jolly—Drayton
Mr. W. A. Newton—Clemson
Mr. C. E. Anderson—Ex. Union
Mr. Phil Byfield—Rutherfordton
Mr. Harold Risher—Finishing Plan
Mr. W. J. Fagan—Gaffney
Mr. W. S. Manning—Gayley
Mr. L. J. Fisher—Gerrish Milliken
Mr. Dan Arrowood—Hartsville
Mr. Jack Craig—Hatch
Mr. Tom Peden—Johnston
Mr. A. G. New—Judson
Mr. H. G. Hester—Jonesville
Mr. W. E. Thrailkill—Kingsley
Mr. M. G. Wallace—Laurens
Mr. Fred Thompson —McCormick
Mr. W. H. Moore—Machias
Mr. L. C. Ellis—Monarch
Mr. H. L. Pratt—Ottaray
Mr. J. A. Ferguson—Lockhart
Mr. C. T. Holland—Pacolet #3
Mr. George Baker—Pacolet #4
Mr. W. F. Garth—Pacolet #6

FROM:

James H. Higginbotham

CC: Mr. Hal C. Byrd
Mr. Ernest DeFore
Mr. R. C. Edwards
Mr. J. J. Norton
Mr. J. M. Oeland
Mr. I. S. Pitts
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

SUBJECT: SURPLUS MACHINERY & EQUIPMENT

We have the following used equipment located within the organization which is available for immediate delivery:

* * *

Please contact me if you are interested in any of this equipment.

J. H.

JEH:geb

General Counsel Exhibit G-5

DEERING MILLIKEN SERVICE CORPORATION

PURCHASING DEPARTMENT

April 9, 1956

To: Mr. Albert Stoudenmire—Abbeville
Mr. W. A. Goodwin—Darlington
Mr. T. C. Jolly—Drayton
Mr. G. T. Rankin—Gaffney
Mr. Dan Arrowood—Hartsville
Mr. A. G. New—Judson
Mr. Jack Armstrong—Laurens
Mr. C. T. Holland—Pacolet #3 & #5
Mr. Milon Christman—Pacolet #4
Mr. Frank Haddon—Pacolet #6

CC: Mr. J. M. Bailey
Mr. R. C. Edwards
Mr. J. J. Norton
Mr. J. M. Oeland
Mr. I. S. Pitts
Mr. G. G. Simmons
Mr. M. G. Wallace
Mr. M. C. Stone

FROM: James H. Higginbotham

SUBJECT: Spinning Frames for Sale

We offer for sale within the organization the following Spinning Frames:

* * *

If you have any interest in these please contact me immediately.

JHH:geb

JH

General Counsel Exhibit G-6

April 11, 1956

Mr. J. H. Higginbotham
Purchasing Department
Greenville, S. C.

Subject: Spinning Frames for Sale

Dear Jim:

We are not interested in the two Saco-Lowell spinning frames as outlined in your letter of April 9th. We are interested in buying 16 Saco-Lowell frames of 1938 model on tape driven, 3¼" gauge, with up to 320 spindles. If the frames are shorter than this we would be interested in checking into whether they could be lengthened to suit our floor space.

The other items shown on the list are in line with what we would like to have except in place of the Shaw long draft we would want a Roth system on which we can add a Duo-Roth. Will you please keep us in mind, and we hope it is possible one of the D. M. mills will be replacing frames of this type and we will be able to purchase them.

Very truly yours,

J. M. Oeland
Treasurer

jmo:m
cc: Mr. H. C. Byrd
Mr. Hawkins
Mr. Goodwin

General Counsel Exhibit G-7

Deering Milliken Service Corporation
Purchasing Department

NEWSLETTER

Number 1

June 8, 1955

To: All Mill Treasurers, Managers, and Superintendents.

Copy to:

Mr. R. H. Bush
Mr. Harry Defore
Mr. K. M. Lowry
Mr. Roger Milliken
Mr. R. B. Newton
Mrs. S. L. Smith

This is the first of a series of Newsletters which you will be receiving from time to time from this Department. The purpose of these will be to bring to your attention information which may be helpful to your mill.

It is suggested that this information be handled with discretion as we would not want it to get to our competition or salesmen.

We will indicate the name of the buyer to whom questions pertaining to items discussed should be directed. Please refer to the number and subject of the item as stated.

Item 1. —DUROMETER—SHORE TYPE A-2:

Buyer —R. F. Sanders

General Counsel Exhibit G-7

Some of our mills, namely Drayton, Excelsior-Union, Laurens, Lockwood, Monarch, and Pacolet 4, are using the Shore Durometer for testing the hardness of roll coverings such as spinning cots, roving and drawing roll covering, slasher roll covering, etc. The price of this instrument is $55.00. If there are 10 or more desired within the organization, we can purchase them at a nice discount. We understand that most textile mills are making effective use of this instrument not only in checking new roll covering, but checking the covering after it has been in operation and especially at buffing time.

Item 2—

SPRAY WELDER—COLMONOY EQUIPMENT AND SUPPLIES:

Buyer — T. B. White

This item was mentioned at the Treasurers Meeting the other day and we find that Excelsior Finishing Plant is now using this item in lieu of metallizing equipment. This unit including pistol, hopper, carburetor, air filter, regulator, parcel, and hose cost $425.00, f.o.b. Atlanta, Ga.

Excelsior Finishing Plant also purchased one tool post holder for $29.50.

The powdered Colmonoy #5 sells for $6.30/lb.; bronze, $2.40/lb.; and SAE #1020, 80¢/lb.

If you are interested in this item we will be glad to obtain pamphlets describing the use of the unit and forward to you immediately.

Item 3.

—STAINLESS STEEL PIPE—TYPE 304 ELC "AS WELDED":

Buyer —R. F. Sanders

Several of our mills use stainless steel schedule 40 pipe in certain corrosive applications. This pipe is normally type

304 or 316 according to the individual corrosive problem. This material has always been purchased in a full finished form.

An "As Welded" form of stainless steel schedule 40 pipe is now available at a price of 10% less than the full finished pipe and is proving very satisfactory. It threads as well as the higher priced pipe and should serve most of our requirements for stainless steel pipe.

Item 4.—PAPER TUBES—WARP SPINNING:

Buyer —H. W. Scott

We have found a new source for paper warp spinning tubes which will save you from 15% to 20%, dependent upon quantity and size. We have just purchased one large order for one of the mills which saved them $2,860. We believe the quality and workmanship of these tubes will prove to be very satisfactory as the manufacturer is well established and has many years of experience behind their product.

Item 5.—BRUSH FOR SHUTTLE FUR:

Buyer —H. W. Scott

B. Snowiss Fur Company is now marketing a plastic handle shuttle fur brush with a replaceable bristle insert section. It sells complete for $1.15 and the inserts are 25¢ each. The brush is conveniently sized to permit brushing the fur inside the shuttle and should be a distinct aid to the loom fixers. It is reported that the life of fur properly brushed is extended immeasurably.

HAL C. BYRD
HAL C. BYRD
Purchasing Agent

HCB/mtv

General Counsel Exhibit G-8

Deering Milliken Service Corporation, Purchasing Department
P. O. Box 2327, Greenville, S. C.

January 10, 1956

To:
Mr. C. E. Anderson
Mr. George Asnip
Mr. J. M. Bailey
Mr. D. I. Beal
Mr. Phil Byfield
Mr. S. J. Craig, Jr.
Mr. E. O. Defore
Mr. R. C. Edwards
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. W. F. Garth
Mr. H. G. Hester
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. Jos. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. T. E. Pedon
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. H. B. Risher
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill
Mr. M. G. Wallace

FROM: H. C. Boyd

Copy to:
Mr. Roger Milliken
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. R. H. Bush
Mr. Harry Defore
Mr. K. M. Lowry
Mr. R. B. Newton
Mr. S. L. Smith
Mr. T. D. Truluck

SUBJECT: Watson & Williams Shuttle of Lantuck Non-Woven Fabric

Newsletter No. 7

Following receipt of Mr. Milliken's letter to the mills dated December 23 reporting on his visit to West Point Manufacturing Company, we called in the representative of Watson & Williams Manufacturing Company, Mr. Ray Norman.

General Counsel Exhibit G-6

Should any of our mills be interested in buying a small quanitity, say 25. for test. Watson & Williams could make delivery in approximately six weeks.

Mr. Norman told us he expected to visit West Point again during the week of January 9 and would report to us any additional information which he might receive on the test shuttles. This will be passed along to you.

H. C. Byrd

HCB/ab

General Counsel Exhibit G-9

Deering Milliken Service Corporation
Purchasing Department
P. O. Box 2327
Greenville, South Carolina

December 8, 1955

To: Mr. Albert Stoudenmire, Abbeville
Mr. W. S. Hawkins, Darlington
Mr. W. A. Newton, Jr., Excelsior #2
Mr. George Rankin, Gaffney
Mr. D. R. Arrowood, Hartsville
Mr. Herbert B. Knox, Johnston
Mr. A. O. New, Judson
Mr. M. G. Wallace, Laurens
Mr. J. A. Ferguson, Lockhart Plant
Mr. L. C. Ellis, Monarch Plant
Mr. H. L. Pratt, Jr., Ottaray Plant
Mr. W. F. Garth, Pacolet #6
Mr. Milon Christman, Pacolet #4
Mr. C. T. Holland, Pacolet #3 & #5

FROM: H. W. Scott

SUBJECT: Harness and Salvage Strapping

We are enclosing small sample of Taff rubberized harness strapping offered by McLane Brothers, Gaffney, S. C., together with price list.

Gaffney Manufacturing Co. has used this product for many years with excellent results.

We have recently negotiated a very favorable pricing agreement with this vendor which will make this product

very attractive price-wise provided we concentrate our volume with them. This is a confidential agreement and we should have no difficulty reaching the maximum discount bracket with the mills' cooperation.

We recommend this product to you and wish you would instruct your people to specify it for your future needs.

HWS/ab

Enclosure

General Counsel Exhibit G-10

DEERING MILLIKEN SERVICE CORPORATION
PURCHASING DEPARTMENT
P. O. Box 2327
Greenville, S. C.

June 4, 1956

To: Mr. Dan Arrowood
Mr. R. C. Edwards
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. W. F. Garth
Mr. W. A. Goodwin
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. T. C. Jolly
Mr. A. G. New
Mr. H. L. Pratt
Mr. G. T. Rankin
Mr. F. A. Thompson
Mr. M. G. Wallace

FROM: R. W. Wise

CC: Mr. H. C. Byrd
Mr. R. H. Bush
Mr. Harry Defore
Mr. K. M. Lowry
Mr. Roger Milliken
Mr. R. B. Newton
Mr. J. J. Norton
Mr. J. M. Oeland
Mr. I. S. Pitts
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. G. G. Simmons
Mr. S. L. Smith
Mr. M. C. Stone.

SUBJECT: REPORT ON TRIAL INSTALLATION OF BAHNSON PNEUMATIC END COLLECTION EQUIPMENT

We have recently completed tests of the 20-frame trial installation of Bahnson "Central Heat Removal" pneumatic end collection, both on an individual basis and as compared to a similar installation of Pneumafil "Central Air, Individual Collection" system.

General Counsel Exhibit G-10

Our tests have shown that the Bahnson system is effective as regards the heat removal and is also effective as regards its prime objective of picking up the ends, as well as fly, etc.

The trial installation is at Pacolet #4, and the mill has expressed the following opinions:

* * *

In conclusion, we feel that Bahnson offers equipment competitive to Pneumafil in construction and operation at a competitive price and merits consideration in any further installation in pneumatic end collection.

We suggest that you contact Pacolet #4 for any information relative to the operation of this equipment; and if you are interested further, we suggest that you visit the mill and observe the equipment in operation.

RWW:geb
Enc.

R. W. WISE

STATIC PRESSURES, TEMPERATURES TRAVERSES, POWER MEASUREMENT:

All the raw data on the Bahnson test is on file in this office. It was omitted from the report due to the volume of measurements and calculations. Salient points have been mentioned in the report, and the writer will be happy to discuss test procedures, data or results with anyone interested.

General Counsel Exhibit G-11

DEERING MILLIKEN SERVICE CORPORATION
PURCHASING DEPARTMENT
P. O. Box 2327
Greenville, S. C.

April 11, 1956

To: Mr. D. R. Arrowood
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. W. F. Garth
Mr. W. A. Goodwin
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. A. G. New
Mr. H. L. Pratt
Mr. George Rankin
Mr. M. G. Wallace

Copy to: Mr. J. M. Bailey
Mr. Harry Defore
Mr. K. M. Lowry
Mr. J. J. Norton
Mr. J. M. Oeland
Mr. I. S. Pitts
Mr. A. B. Sibley
Mr. A. L. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone

From: Hal C. Byrd

Subject: Pneumastop

Attached are your copies of the purchase order for your mill for Pneumastop.

Following is a delivery schedule which we have today worked out with Pneumafil in an effort to give deliveries nearest possible to the dates requested by all mills and to conform to the most economical manufacturing and installation procedures. Will you please advise after reviewing this schedule if this is not satisfactory.

The deliveries shown for June and July are firm with Pneumafil as they are proceeding immediately to engineer and produce this equipment to meet the required deliveries. It would be possible in extreme cases to change deliveries beginning in September and later; however, you will note that these deliveries have been set to take into account the type of frame for which the equipment is to be supplied and, also, generally agrees with your request. The schedule is as follows:

Month	Mill	Quantitiy and Type Frame
June	Judson	13 Frames—Saco-Lowell 10x5 (Given first priority due to expansion program and necessity for establishing maximum job assignment initially)

General Counsel Exhibit G-11

Month	Mill	Quantity and Type Frame
June	Lockhart	9 Frames—Rieter 12x6⅛
July	Lockhart	10 Frames—Saco-Lowell FS-2 10x5
July	Hartsville	13 Frames—Saco-Lowell FS-2 10x5
July	Laurens.	12 Frames—Rieter 12x6⅛
September	Gaffney	20 Frames—Saco-Lowell 10x5
October	Monarch Plant	12 Frames—Platt 12x6½
October	Monarch Plant	10 Frames—Saco-Lowell 10x5
October	Ottaray Plant	7 Frames—Platt 12x6½
November	Pacolet #5	4 Frames—Platt 12x6½
November	Pacolet #5	10 Frames—Saco-Lowell 12x7
November-December	Pacolet #3	4 Frames-Saco-Lowell 11x5½
November-December	Pacolet #3	16 Frames—Saco-Lowell 10x5
December	Darlington	5 Frames—Whitin 12x6½
December	Darlington	7 Frames—Saco-Lowell 10x5
January	Pacolet #6	16 Frames—Saco-Lowell 10x5
January-February	Pacolet #4	8 Frames—Platt 12x6½
Jan.-Feb.	Pacolet #4	12 Frames—Saco-Lowell 10x5
Jan.-Feb.	Pacolet #4	20 Frames—Saco-Lowell 11x5½

In view of the fact that Pneumafil is now planning to manufacture the above equipment scheduled for September on in accordance with the above schedule, it is imperative that notice be given by *April 30* of any changes required with respect to change in frame sizes, additional or reduced number of frames, layout or any item pertaining to a change which may affect the application of Pneumastop on your frames.

HCB

HCB/mtw
cc: Mr. Roger Milliken
Mr. C. R. Harris

General Counsel Exhibit G-13

Deering Milliken Service Corporation
Purchasing Department
P. O. Box 2327
Greenville, South Carolina

July 18, 1955

To: Abbeville Mills Corporation
Darlington Manufacturing Company
Drayton Mills
Excelsior Mills #1
Excelsior Mills #2
Excelsior Mills #3
Excelsior Finishing Plant
Gaffney Manufacturing Company
Gayley Mill Corporation
Gerrish Milliken Mill
Hartsville Cotton Mill
Hatch Mill Corporation
Johnston Mill
Judson Mills
Kingsley Mill Corporation
Laurens Mills
Monarch Mills, Lockhart Plant
Monarch Mills, Monarch Plant
Monarch Mills, Ottaray Plant
McCormick Spinning Mill
Pacolet Mfg. Co. 3 & 5
Pacolet Mfg. Co. 4
Pacolet Mfg. Co. 6

General Counsel Exhibit G-13

FROM: H. W. Scott

SUBJECT: Surplus Tubes

Two of our mills report they have in surplus inventory paper tubes which they would like to transfer to another mill who might be able to use them. These two lots are as follows:

Gaffney Mfg. Co.:	Approximately 700 33" Convolute tubes 1¾" I.D. with ⅜" wall thickness. 8½" long x 1⅝" I.D.
Monarch Lockhart:	10-12,000 No. 33 Convolute tubes.

Please indicate on attached copy of this memorandum whether or not you are interested in either of these lots and return to us as soon as possible.

H. W. SCOTT

HWS/ab

General Counsel Exhibit G-14

DEERING MILLIKEN SERVICE CORPORATION
PURCHASING DEPARTMENT
Box 2327
Greenville, S. C.

October 7, 1955

To: All Mills—Attention: Master Mechanic
From: R. F. Sanders
Subject: Recharging of CO-2 Fire Extinguishers and Pressure Cartridges for Dry Chemical Fire Extinguishers

It has come to our attention that our annual expense for recharging CO-2 fire extinguishers and the CO-2 charged pressure cylinders for dry chemical fire extinguishers is probably running into considerable money.

We would like to fully investigate this expense, with the thought in mind of concentrating our business or possibly even setting up a central point for doing this for a group, or all of our mills.

In order for us to have a place to begin work, would you please advise your approximate annual expense for this service done outside of your mill.

We will need to know the approximate number and make of each size of CO-2 extinguishers that you have recharged annually, and also, the approximate number and make of the pressurized cylinders used in dry chemical type extinguishers that you have refilled annually.

I know that your needs along these lines will vary, but we would like to have your best estimate of this usage.

We would like to have this information as soon as possible.

R. F. S.

RFS/bc

General Counsel Exhibit G-15

DEERING, MILLIKEN SERVICE CORPORATION

PURCHASING DEPARTMENT

P. O. Box 2327

Greenville, S. C.

August 7, 1954

To: Abbeville, W. B. Hill
Cowan, Donald I. Beal
Darlington, F. P. Mullendore
Drayton, G. G. Simmons
Dutchess, A. D. Demon
Ex.-Union, C. E. Anderson
Ex.-Clemson, W. A. Newton
Ex.-Ruth., R. H. Jones
Ex. Fin. Plt., H. B. Risher
Farnsworth, Joe Meehan
Gaffney, J. M. Jackson
Gayley, W. S. Manning
Gerrish Mil., L. J. Fisher
Hartsville, J. A. Garner
Hatch, L. J. Craig
Johnston, T. E. Peden
Jonesville, H. G. Hester
Judson, J. M. Bailey
Kingsley, W. E. Thrailkill
Laurens, George Asnip
Lockwood, H. F. Staples
Lockhart, J. A. Ferguson
Monarch, L. C. Ellis
Ottaray, H. L. Pratt
McCormick, F. A. Thompson
Pacolet 3 & 5, C. T. Holland
Pacolet 4, George Baker
Pacolet 6, W. F. Garth

CC. Mr. Randolph Brandt
Mr. E. O. Defore
Mr. Harry Defore
Mr. R. C. Edwards
Mr. E. H. Hines
Mr. K. M. Lowry
Mr. Roger Milliken
Mr. Russell Newton
Mr. J. J. Norton
Mr. J. M. Oeland
Mr. I. S. Pitts
Mr. H. W. Scott
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. S. L. Smith
Mr. M. C. Stone
Mr. W. B. D. Stroud
Mr. T. D. Truluck

From: Hal C. Byrd

Subject: Cleaning Equipment

General Counsel Exhibit G-15

With reference to our letter of July 26, 1954, Mr. Lowry and I have reviewed our entire program for studying potentials for cleaning equipment in the main areas, namely, frame cleaners, ceiling cleaners, and loom cleaners.

This program has been set up so that the scheduling of vendor visits to the plants will be handled by Mr. H. W. Scott of this department. This will be coordinated with D.M.I.E.D., who will prepare the specifications.

The following vendors will be called in on schedule to visit each mill to discuss any area of cleaning with which the mill is interested.

LOOM CLEANERS	FRAME CLEANERS	CEILING CLEANERS
Cleveland Tramrail	American Monorail	American Monorail
American Monorail	Parks-Cramer	Parks-Cramer
Parks-Cramer		Louden
		Bahnson

Mr. Scott will coordinate these visits with the mills, making it as convenient as possible.

You will note that in every case we have more than one vendor involved for competition and, in line with our present thinking, we do not want any special interest shown in any one particular manufacturer's equipment.

We are asking each vendor to prepare five (5) copies of their recommendations and proposals to be distributed as follows: Four (4) copies to this Department, and one (1) copy to the mill.

After all proposals are analyzed with respect to any one mill, the Purchasing Department will forward two copies of the analysis of the best bid showing the various components of the job to the mill in order that return on investment can be calculated. As was indicated by Mr. Milliken in the recent meetings, he would like for each mill to calculate the return on investment as soon as possible. If the return

is favorable, a request for capital authorization should be prepared and submitted according to the established procedure.

As soon as authorization is approved, a requisition should be sent to the Purchasing Department, to Mr. Scott's attention, with one (1) copy of the cost analysis approved by the mill.

HCB/mtw

[redacted]

General Counsel Exhibit G-19

Greenville, S. C.
September 27, 1955

MESSRS: DAN ARROWOOD
J. M. BAILEY
GEORGE BAKER
L. C. ELLIS
J. A. FERGUSON
W. A. GOODWIN
J. M. JACKSON
TOM JOLLY
ROGER MILLIKEN
ALFRED NEW
J. J. NORTON
J. M. OELAND
IRA PITTS
G. T. RANKIN
A. B. SIBLEY
W. A. L. SIBLEY
G. SIMMONS
M. C. STONE
M. G. WALLACE

FROM: R. W. WISE

SUBJECT:

SUPPLIES—LOCKWOOD DIVISION

We want to take this opportunity to thank you for your cooperation in marking the items on the list of supplies located at Lockwood. Your prompt attention to this matter placed us in a very favorable purchasing position at the Lockwood sale and allowed us to evaluate the net worth of the supply items to the other Deering Milliken mills. The supply parts at auction sold for more money than we could justify and we, therefore, did not purchase them.

* * *

DEERING MILLIKEN
PURCHASING DEPARTMENT

R. W. Wise
R. W. WISE, Buyer

RWW:vsr

General Counsel Exhibit G-20

DEERING MILLIKEN SERVICE CORPORATION
PURCHASING DEPARTMENT
P. O. Box 2327
Greenville, S. C.

November 15, 1956

To: Mr. E. G. Allee
Mr. C. E. Anderson
Mr. George Asnip
Mr. J. M. Bailey
Mr. D. I. Beal
Mr. S. J. Craig, Jr.
Mr. E. O. Defore
Mr. L. G. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. W. F. Garth
Mr. H. G. Hester
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. J. A. Meehan
Mr. W. H. Moore.
Mr. J. J. Norton, Jr.
Mr. R. C. Owings
Mr. T. E. Peden
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. H. B. Risher
Mr. J. V. Roberts
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill
Mr. M. G. Wallace
Mr. R. H. Bush
Mr. Harry Defore
Mr. K. M. Lowry
Mr. R. B. Newton
Mr. S. L. Smith
Mr. T. D. Truluck

From: Hal C. Byrd

Attached is a catalog for the Darlington sale to be held December 12 and 13, 1956. Will you please review this and let us have a list of items on which you wish us to bid at

the sale for your mill. Please return the list to us promptly, as we would like to have an opportunity to discuss these with you prior to the sale.

HCB

HCB:mtw

cc: Mr. Roger Milliken
Mr. W. A. L. Sibley
Mr. A. B. Sibley
Mr. M.C. Stone

Respondents' Exhibit G-3

DEERING MILLIKEN SERVICE CORPORATION
PURCHASING DEPARTMENT
P. O. Box 2327
Greenville, S. C.

November 28, 1956

To: Drayton, Mr. T. C. Jolly
Gaffney, Mr. George Rankin
Hartsville, Mr. D. R. Arrowood
Judson, Mr. A. G. New
Laurens, Mr. Jack Armstrong
Lockhart, Mr. J. A. Ferguson
Monarch, Mr. L. G. Ellis
Ottaray, Mr. H. L. Pratt
Pacolet 3 & 5, Mr. C. T. Holland
Pacolet 4, Mr. J. M. Jackson
Pacolet 6, Mr. W. F. Garth

Copy to: Mr. I. S. Pitts
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone
Mr. J. M. Oeland
Mr. T. B. White

From: Hal C. Byrd

Subject: Draper and Saco-Lowell Parts—Darlington

Attached is a list of Draper loom parts and Saco-Lowell carding and spinning parts located at Darlington. In accordance with our telephone conversation, these parts are offered to you at a discount of 25% on the Draper parts and 20% on the Saco-Lowell parts from prices shown on list. This is the same as the offer made by Draper and Saco-Lowell to Darlington

As discussed with you, we are most anxious to sell these parts to the D. M. mills rather than return them to the vendor, if possible.

Respondents' Exhibit G-3

Please have the list reviewed thoroughly and telephone your orders in to Tom White of this department Saturday morning.

The freight on these parts will be prepaid to your mill.

HCB
w.

HCB:mtw

General Counsel Exhibit H-1

DEERING MILLIKEN SERVICE CORPORATION
COTTON WASTE DEPARTMENT
COTTON DEPARTMENT
Union, S. C.

To: Mr. J. M. Bailey
Mr. J. J. Norton
Mr. J. M. Oeland
Mr. I. S. Pitts
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone

DATE: August 16, 1956

COPIES TO: Mr. Roger Milliken
Mr. Minot Milliken

FROM: T. D. Truluck

SUBJECT: General Cotton Comments—
Read at your Leisure

* * *

As we begin the new season, I am going to try to keep each of you posted as to what is going on regarding cotton and its movement, and what our competitors are doing cottonwise.

* * *

General Counsel Exhibit H-2

COTTON DEPARTMENT
DEERING MILLIKEN SERVICE CORPORATION
Union, S. C.

CC: Mr. Lancaster
Mr. Tucker

Date: January 8, 1955

To: Mr. J. M. Qeland

From: T. D. Truluck

Subject:

* * *

There are many, many details involved in handling cotton for our mills which one cannot understand unless he has actually experienced it. However, we certainly appreciate your pointing this thing out and hope you will continue to do so, as we are most anxious to co-operate and cut corners and expenses everywhere possible.

Kindest regards.

T.D.T.

TDT/cl

Respondent's Exhibit H-3

February 22, 1955

Mr. T. D. Truluck
Cotton Department
Union, S. C.

Dear Tru:

We discussed when I was in your office Friday the advisability of buying some more eastern growth cotton. On returning to the mill I found that our ends down had improved we feel on the strength of getting out of our mix the eastern growth we have been using. It is my opinion this improvement was brought about by getting out big bale cotton from the mix rather than the eastern growth. On the other hand, I believe I would like to have you discuss with me before buying any more eastern growth cotton.

We are making plans to increase the amount of irrigated cotton in our mix in a test through our plant. Should this work out satisfactorily we will increase the irrigated in the mix. As stated to you, I think it would be wise to buy another 1000 bales of irrigated cotton as insurance to be sure we have sufficient cotton to get well into the new crop.

Very truly yours,

J. M. OELAND
Treasurer

jme-m
cc: W. S. Hawkins

General Counsel Exhibit H-4

October 22, 1955

Mr. Jim Oeland
Darlington Manufacturing Company
Darlington, South Carolina

Dear Jim:

I tried to call you this morning but they told me you were away until Monday. I came into Memphis yesterday and have been looking over the situation, and it certainly is not any better than Billy Barrett has been telling me. The white cotton is just not here. We know of one lot of Middling and better that may come up for sale in the next day or two. If it does come on the market we might be able to buy it at 37.00, which means about 38.35 landed at the Mill. Will buy this lot if possible and then split it up among you Mills.

* * *

Very truly yours,

Mr. T. D. Truluck

CC: Mr. B. M. Yates

General Counsel Exhibit H-7

November 14, 1956

Mr. J. M. Oeland
Darlington Mfg. Company
Darlington, S. C.

Dear Jim:

As per your letter of the 13th, we are asking the Commission Houses to make final settlement with you immediately on such accounts.

Francis Lancaster and Mr. Watford are in the process now of switching your stocks over, and as soon as we receive invoices from you, which we understand are now being prepared, we will have our Memphis Office remit to you for same. We figure it will be much easier to handle this way and then we can reinvoice and reapply the cotton to the various mills so that each will get their equitable disposition of the various qualities.

There may be a few days transpiring between the receipt of the invoices and remittances due to the fact that Memphis is the only office that can handle the exchange of money, etc. Upon receipt of the invoices, the storage at Cotton Blossom will be stopped as far as Darlington Manufacturing Company is concerned, with Cotton Blossom billing you for all accumulated storage.

Kindest regards.

Yours very truly,

T. D. Truluck

cc: Mr. C. L. Watford
TDT/cwc

AUTHORIZATION FOR CAPITAL EXPENDITURE

DATE

DIVISION:

DEPARTMENT:

LOCATION:

TITLE:

SCOPE:

PROJECT NO. 14-52

ESTIMATED STARTING DATE

ESTIMATED COMPLETION DATE

CREATED REVIEW DATE

General Counsel Exhibit I-2

DEERING MILLIKEN SERVICE CORPORATION
Fiber Quality Control and Research Department

Date: June 1, 1956

To:

Mr. C. E. Anderson	Mr. W. S. Manning
Mr. George Asnip	Mr. J. A. Meehan
Mr. J. M. Bailey	Mr. Wm. H. Moore
Mr. D. I. Beal	Mr. J. J. Norton, Jr.
Mr. S. J. Craig, Jr.	Mr. J. M. Oeland
Mr. E. O. Defore	Mr. T. E. Peden
Mr. R. C. Edwards	Mr. I. S. Pitts, Jr.
Mr. L. C. Ellis	Mr. H. L. Pratt
Mr. J. A. Ferguson	Mr. H. B. Risher
Mr. L. J. Fisher, Jr.	Mr. G. G. Simmons
Mr. Winston Garth	Mr. F. A. Thompson
Mr. C. T. Holland	Mr. W. E. Thrailkill
Mr. J. M. Jackson	Mr. M. G. Wallace

From: Harry Defore

Subject: Quality Control Program—Mr. Milliken's Memo 5/22/56

We have had several requests as to the personnel that a mill will need for this type program. While the personnel requirements will vary according to the nature of the mill, we think the only needed personnel which may require time to secure, in case the mill does not already have them, is a good technical superintendent and a good laboratory director. In the case of a smaller mill, one man may be able to handle rather than the two. A knowledge of statistics, through charting, will be needed by these men but you have been furnished statistical manuals for this purpose.

In addition to these there will be needed technicians for the laboratory and frequency checkers over and beyond those normally required for the institution and maintenance

of standards. In the case of Monarch, 87,000 spindles and 2165 looms, 2 lab technicians and 6 frequency checkers are being added. After the program is completed, it may be possible to reduce the number of lab technicians and frequency checkers required.

Since our program is still in its formative stage and will be so at best up until the July 16 meeting there is not too much that we can offer you should you wish to visit here prior to that time. In case you still would like to do so, however, please contact Mr. Ellis of Monarch.

Harry Defore

HD:rh

cc: Mr. K. M. Lowry
Mr. R. B. Newton
Mr. Sterling L. Smith
Mr. T. D. Truluck
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. Roger Milliken

General Counsel Exhibit I-3

January 19, 1956

Mr. Harry DeFore
Cotton Department
Union, S. C.

Dear Harry:

When Mr. Roger Milliken was here this week there were two things he asked us to look into immediately and have an answer by February 6th when we have a treasurers' meeting.

He is very anxious for us to consider the purchase of some Rieter warp spinning frames to fill in some spare floor space in our card room. We plan to purchase around 5000 spindles. He suggested that I contact Jesse Jackson as Jesse had recommended the purchase of this type frame for Laurens. He further stated that you were making some tests in your pilot plant of this type equipment. We would appreciate very much your bringing us up to date on where the matter stands and your opinion as to this type spinning against Saco-Lowell and Whitin. Our preference, of course, would be to get either the Saco-Lowell or Whitin as we have frames in the mill of these two makes and do not want to add a third make unless it is a good move. On the other hand, as you know, it is useless to tell Mr. Milliken this if he gets his head set.

The other question was again the Duo-Roth against the Whitin or Roberts two apron system. It is possible that a deal can be worked out where the price of the Duo-Roth will be brought nearer in line with the Roberts and Whitin. On the other hand, I have gathered at Hartsville that they like the Whitin better than their Duo-Roth installation.

General Counsel Exhibit 1-3

We had not planned here to put the double apron system on our warp until we had investigated further the savings possible. Mr. Milliken seems very interested in our doing something about it and wants us to buy the Duo-Roth. We would appreciate your comments and advice. We realize you have written this on several occasions and we are only asking now for up-to-date information.

Very truly yours

J. M. Oeland
Treasurer

jmo-m
cc: Mr. Hawkins
Mr. Goodwin

Deering Milliken Service Corporation
Cost Department
P. O. Box 1698
Greenville, South Carolina
January 19, 1955

To: All Treasurers, Managers, and Superintendents.

CC: All Personnel Managers
Mr. C. G. Johnson
Mr. K. M. Lowry
Mr. Roger Milliken

From: Sterling L. Smith

Subject: 1954 Annual Labor Turnover.

The net separations show an improvement from 26.7% in 1953 to 23.8% in 1954, despite an 8.1% reduction in personnel. Seven mills (marked A) show an increase which is more than accounted for by a net reduction in personnel. Only two mills (marked B) show an increase in separations despite an increase in personnel.

We have discontinued the figure of gross separations because the excluded items---returns to school and entered service---vary substantially between mills. We continue to show these detailed figures by mill.

This is the first time we have shown the figure of reduction in personnel (which is the net reduction after excluding transfers). We show this figure in red---to be subtracted from the net separations---where it is a reduction, and black where there has been an increase.

The improvement, after allowing for personnel reduction, has been particularly marked at

Darlington
Gaffney
Monarch Group
Pacolet Group
All Rayon Mills
Hatch

The only mills continuing with a figure over 20% for net separations less personnel reduction are

Hartsville
Lockwood
Gerrish Milliken
Excelsior Finishing
Excelsior Rutherfordton
Excelsior Union
Farnsworth

General Counsel Exhibit J-1

nsel Exhibit J-1

I/19/55.

LABOR TURNOVER 1954 CALENDAR YEAR

Mill	Average No. of Employees	Separations Excluded: Returns To School	Separations Excluded: Entered Service	Net Separations	1954 % Net Separations
Cotton Mills					
Darlington	605	12	13	108	17.9
Gaffney	768	14	1	73	9.5
Hartsville	531	11	9	189	32.5
Lockhart	875	6	11	123	14.1
Lockhart Power	75	-	-	3	4.0
Monarch	936	12	12	93	9.9
Ottaray	331	4	10	39	11.8
Monarch Group	(2,217)	(22)	(33)	(255)	(11.5)
Gainesville	827	8	10	133	16.1
New Holland	1,404	22	20	186	13.2
Pacolet #3 & #5	1,408	7	12	129	9.2
Pacolet Group	(3,639)	(37)	(42)	(448)	(12.3)
Dutchess	349	3	3	72	20.6
Lockwood	740	3	11	498	67.3
Lockwood/Dutchess	(1,089)	(6)	(14)	(570)	(52.3)
Total	8,899	102	112	1,643	18.5
Rayon Mills					
Clemson	410	9	4	93	22.7
Drayton	1,208	10	4	195	16.1(A)
Gayley	193	2	6	140	72.5(A)
Gerrish Milliken	346	6	7	145	41.9
Judson	1,839	7	35	643	35.0(A)
Kingsley	174	4	2	90	51.7
Laurens	954	2	8	232	24.3(A)
Total	5,124	40	66	1,538	30.-(A)
Woolen Mills					
Abbeville (& W.P.)	1,242	43	33	194	15.6
Johnston	458	-	7	341	74.5(A)
McCormick	629	3	14	179	28.5(A)
Finishing	392	4	2	121	30.9
Worsted Group	(1,479)	(7)	(23)	(641)	(43.3)
Hatch	358	17	17	34	9.5
Rutherfordton	104	7	1	37	35.6(B)
Union	394	36	6	90	22.8(B)
Woolen Group	(856)	(60)	(24)	(161)	(18.8)
Cowan	185	-	-	44	23.6
Farnsworth	394	5	1	102	25.6(A)
Cowan/Farnsworth	(579)	(5)	(1)	(146)	(25.2)
Total	4,156	115	81	1,142	27.5
GRAND TOTAL	18,179	257	259	4,323	23.8

LABOR TURNOVER 1954 CALENDAR YEAR

Average No. of Employees	Separations Excluded: Returns To School	Separations Excluded: Entered Service	Net Separations	1954 % Net Separations	Note - 1954 % Reduction In Personnel (Excl. Transfers)	1953 % Net Separations
605	12	13	108	17.9	1.5	23.0%
768	14	1	73	9.5	.8	15.3
581	11	9	189	32.5	2.8	34.7
875	6	11	123	14.1	3.4	33.5
75	-	-	3	4.0	2.7	6.8
936	12	12	93	9.9	3.3	17.3
331	4	10	39	11.8	1.8	16.5
(2,217)	(22)	(33)	(255)	(11.5)	(2.9)	(23.2)
827	8	10	133	16.1	1.9	26.2
1,404	22	20	186	13.2	3.8	23.9
1,408	7	12	129	9.2	4.5	19.5
(3,639)	(37)	(42)	(448)	(12.3)	(3.6)	(22.7)
349	3	3	72	20.6	4.3	24.7
740	3	11	498	67.3	.4	74.3
(1,089)	(6)	(14)	(570)	(52.3)	(1.7)	(59.1)
8,890	102	112	1,643	18.5	2.6	27.8
410	9	4	93	22.7	5.1	25.2
1,208	10	4	195	16.1(A)	11.7	14.9
193	2	6	140	72.5(A)	58.0	52.6
346	6	7	145	41.9	12.1	50.1
1,839	7	35	643	35.0(A)	32.8	23.5
174	4	2	90	51.7	34.4	56.1
954	2	8	232	24.3(A)	20.0	21.9
5,124	40	66	1,538	30.-(A)	22.8	26.0
1,242	43	33	194	15.6	.7	18.7
458	-	7	341	74.5(A)	60.9	25.0
629	3	14	179	28.5(A)	10.0	19.1
392	4	2	121	30.9	39.-	51.7
(1,479)	(7)	(23)	(641)	(43.3)	(12.8)	(29.1)
358	17	17	34	9.5	30.7	45.3
104	7	1	37	35.6(B)	2.9	9.6
394	36	6	90	22.8(B)	9.4	20.0
(856)	(60)	(24)	(151)	(18.8)	(17.5)	(27.6)
185	-	-	44	23.8	11.9	29.0
394	5	1	102	25.6(A)	3.8	23.4
(579)	(5)	(1)	(146)	(25.2)	(6.3)	(25.4)
4,156	115	81	1,142	27.5	1.6	25.4
18,170	257	259	4,323	23.8	8.1	26.7

Deering Milliken Service Corporation
Cost Department
P. O. Box 1698
Greenville, South Carolina
March 9, 1956

To: All Treasurers, Managers and Superintendents

CC: All Personnel Managers
Mr. C. G. Johnson
Mr. K. M. Lowry
Mr. Roger Milliken

From: Sterling L. Smith

Subject: 1955 Annual Labor Turnover

The 1954 report showed 23.8% net separations. The exclusion of Lockwood-Dutchess adjusts this to 22.0%.

1955 is virtually the same at 22.3%. But actually there has been some retrogression since there was only a 3.3% net reduction in personnel in 1955 compared to the 8.1% in 1954.

1955 performance was rather mixed--11 mills showing improvement when all factors are considered, the other 15 being somewhat worse.

Three mills (marked AA) show an improvement in net separations and their improvement is real after taking account of the personnel reduction in the two years. Eight mills (marked A) show an increase in the percentage in net separations but this is accounted for by an increase in the personnel reductions.

Another point of significance is that twelve mills (marked X) show more than 20% net separations less personnel reduction. These are the mills which appear to have more to work on and we perhaps should be concerned that this number 12 compares with only 6 for 1954 (after eliminating Lockwood).

SLS

SLS:de

General Counsel Exhibit 72

3/8/56

General Counsel Exhibit J-2

LABOR TURNOVER - 1955 CALENDAR YEAR

Mill	Average No. Of Employees	Separations Excluded: Returns To School	Separations Excluded: Entered Service	Net Separations	1955 % Net Separations
Cotton Mills					
Darlington	597	6	4	151	25.3 (X)
Gaffney	731	10	4	89	12.2 (A)
Hartsville	951	-	13	190	34.5 (A) (X)
Lockhart	829	6	7	120	14.5 (A)
Lockhart Power	69	-	1	5	7.2 (A)
Monarch	986	20	14	124	12.6
Ottaray	306	3	6	41	13.4 (A)
Monarch Group	(2,386)	(34)	(32)	(320)	(13.2)
Gainesville	831	6	11	228	27.4 (X)
New Holland	1,393	28	8	326	23.4 (X)
Pacolet # 3 & 5	1,760	38	18	179	12.3
Pacolet Group	(3,984)	(72)	(37)	(733)	(19.9)
Total	7,753	122	90	1,453	18.7
Rayon Mills					
Clemson	416	16	4	102	24.5 (X)
Drayton	1,110	9	11	148	13.3
Gayley	189	-	1	92	48.7 (X)
Gerrish Milliken	405	6	3	173	42.7 (X)
Judson	1,500	14	20	351	23.4 (X)
Kingsley	165	1	2	42	25.5 (X)
Laurens	832	6	9	145	17.4 (AA)
Total	4,617	52	50	1,053	22.8
Woolen Mills					
Abbeville (& W.P.)	1273	40	25	183	14.4 (AA)
Johnston	347	-	1	118	34.
McCormick	568	6	12	321	56.5 (X)
Finishing	471	15	3	184	39.1 (A)
Worsted Group	(1,286)	(21)	(16)	(623)	(48.)(A)
Hatch	398	23	6	115	28.9 (A) (X)
Rutherfordton	102	-	-	20	19.6 (AA)
Unica	399	39	1	85	21.3 (AA)
Woolen Group	(899)	(62)	(7)	(220)	(24.5)(A) (X)
Cowan	195	-	-	51	26.2
Farnsworth	388	6	1	94	24.2 (X)
Cowen/Farnsworth	(583)	(6)	(1)	(145)	(24.9) (X)
Total	4,141	129	49	1,171	28.3 (A)
GRAND TOTAL	16,511	303	189	3,677	22.3

LABOR TURNOVER - 1955 CALENDAR YEAR

Separations Excluded: rns hool	Entered Service	Net Separations	1955 % Net Separations	Note-1955 % Reduction In Personnel (Excl. Transfers)	1954 % Net Separations	Note-1954 % Reduction In Personnel (Excl. Transfers)
6	4	151	25.3 (X)	1.-	17.9	1.5
0	4	89	12.2 (A)	5.9	9.5	.8
-	13	190	34.5 (A) (X)	5.1	32.5	2.8
6	7	120	14.5 (A)	4.1	14.1	3.4
-	1	5	7.2 (A)	11.6	4.-	2.7
20	1	124	12.6	5.2	9.9	3.3
3	6	41	13.4 (A)	7.5	11.8	1.8
3)	(32)	(200)	(13.2)	(.6)	(11.5)	(2.9)
6	11	228	27.4 (X)	.5	16.1	1.9
8	8	326	23.4 (X)	.8	13.2	3.8
38	18	179	12.3	4.5	9.2	4.5
72)	(37)	(733)	(19.9)	(1.6)	(12.3)	(3.6)
22	90	1,453	18.7	.3	13.7	2.8
16	4	102	24.5 (X)	3.6	22.7	5.1
9	11	148	13.3	2.-	16.1	11.7
-	1	92	40.7 (X)	4.2	72.5	58.-
6	3	173	42.7 (X)	.2	41.9	12.1
14	20	351	23.4 (X)	.5	35.-	32.8
1	2	42	25.6 (X)	.6	51.7	34.4
6	9	145	17.4 (AA)	13.2	24.3	20.-
52	50	1,053	22.8	2.2	30.-	22.8
40	25	183	14.4 (AA)	3.5	15.6	.7
-	1	118	34.-	19.6	74.5	60.9
6	12	321	56.5 (X)	34.9	28.5	10.-
15	3	184	39.1 (A)	21.7	30.9	39.-
21)	(16)	(623)	(49.-)(A)	(26.5)	(43.3)	(12.8)
23	6	115	28.9 (A) (X)	4.-	9.5	30.7
-	-	20	19.6 (AA)	2.9	35.6	2.9
39	1	85	21.3 (AA)	4.3	22.8	9.4
62)	(7)	(220)	(24.5)(A) (X)	.4	(18.8)	(17.5)
-	-	31	26.2	7.2	23.8	11.9
6	1	94	24.2 (X)	.5	25.6	3.8
(6)	(1)	(145)	(24.9) (X)	(2.1)	(25.2)	(6.3)
129	49	1,171	28.3 (A)	(10.4)	27.5	1.6
303	189	3,677	22.3	(3.3)	22.-	8.1

1520

General Counsel Exhibit J-3

Deering Milliken Service Corporation
Cost Department
P. O. Box 1698
Greenville, South Carolina
August 5, 1955

To: Cotton Treasurers, with copies to Managers or Superintendents.

From: Sterling L. Smith

Subject: *Overhead Labor Report* —Cotton—at 6/12/55

CC: Mr. Roger Milliken
Mr. K. M. Lowry
Mr. H. C. Byrd
Mr. R. B. Newton

The attached report shows that actual personnel continues to increase by slightly more than warranted by the increase in style variety, installed equipment and volume.

	Current			Inc./Dec. Due to	
	Actual	Over/ Under	Inc./Dec. vs. 11/30/54	Actual Personnel	"Competitive" Basis
Supervision	245.3	21.3	3.9	6.5	2.6
I.E. & Lab	75.5	9.7	.6	3.5	2.9
Office	91.8	2.3	1.	1.	—
Sub-Total Salaries	412.6	33.3	5.5	11.	5.5
Comparable Hourly	737.8	117.4	.4	.8	1.2
Total Comparable	1,150.4	150.7	5.9	10.2	4.3
Special Order	59.5	—	(32.3)	(32.3)	—
Village	15.	.6	4.0	5.5	1.5

The overall position by mill is

	Actual	Over/ Under	Details of Over/Under			
			Supv.	IE & Lab	Office	Hourly
Darlington	92.	17.4	4.1	5.1	.2	8.4
Gaffney	127.	17.5	2.8	2.	.8	11.9
Hartsville	91.7	18.3	4.5	.6	1.9	15.1
Lockhart	123.	15.8	4.4	—	2.4	9.
Monarch	168.7	17.6	6.6	.7	2.4	7.9
Ottaray	47.	6.2	1.5	—	—	4.7
Group Total	338.7	39.6	12.5	.7	4.8	21.6
Gainesville	126.2	18.2	2.1	2.9	1.5	15.9
New Holland	182.3	22.3	3.9	.5	2.8	28.5
Pacolet	192.5	17.4	3.4	2.1	.1	16.
	501.	57.9	2.6	1.3	1.2	60.4

SLS:mci

General Counsel Exhibit J-4

December 29, 1955

To: Mr. Sterling L. Smith

From: Darlington Mfg. Co.

Subject: Labor Complement

In discussing our labor complement yesterday, it was noticed that personnel assigned to the sweeping task has been increased over previous reports, particularly in our Carding & Spinning departments.

From talking with Mr. Goodwin concerning these cleaners, it is understood that the increased number have been added on a semi-temporary basis, in an effort to return the mill to a cleaner basis during the present period of major machinery changes in the mentioned departments.

D. W. Barrett

DWB/dt
cc: Mr. W. A. Goodwin

General Counsel Exhibit J-5

Deering Milliken Service Corp.
Cost Department
Box 1698
Greenville, South Carolina
March 3, 1956

To: All Treasurers and Managers

From: Sterling L. Smith

CC: Mr. H. C. Byrd
Mr. K. M. Lowry
Mr. Roger Milliken
Mr. Russell Newton

Subject: Overtime Premium

We recently asked all mills to report on overtime practice in connection with holidays. This can be summarized as follows:

1. *All mills* pay time and a half for work on a holiday.
2. If the holiday worked falls in the first 40 hours actually worked by an employee, *all mills* also pay time and a half on any hours worked over 40.
3. If the holiday worked occurs *after* 40 hours have been worked by the employee, *practice varies,* as shown by this example:

Hours Worked							Hours Paid	
Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.	Total	A	B
8	8	8	8	8	8	48	52	56

Holiday

A. Paid by—*Gaffney*

Excelsior-Clemson
Gayley
Gerrish Milliken
Judson
Laurens
Kingsley

B. Paid by all other mills in S. C., N. C., Georgia and Maine. (Machias and Jonesville not reporting.)

SLS:de

General Counsel Exhibit J-6

Deering Milliken Service Corporation
Cost Department
Box 1698
Greenville, South Carolina
July 19, 1956

CONFIDENTIAL

To: Messrs. George Asnip
E. O. DeFore
J. A. Meehan
J. J. Norton, Jr.
J. M. Oeland
I. S. Pitts, Jr.
A. B. Sibley
W. A. L. Sibley
G. G. Simmons
M. C. Stone

CC: Messrs. R. L. Collett
Harry Defore
C. G. Johnson
K. M. Lowry
Roger Milliken
R. B. Newton
Henry Sloan

CC: Messrs. C. E. Anderson
J. M. Bailey
D. I. Beal
L. C. Ellis
J. A. Ferguson
L. J. Fisher
W. F. Garth
C. T. Holland
J. M. Jackson
W. S. Manning
W. H. Moore
R. C. Owings
T. E. Peden
H. L. Pratt, Jr.
H. B. Risher
F. A. Thompson
W. E. Thrailkill
T. D. Truluck
M. G. Wallace
A. G. New
S. J. Craig, Jr.

From: Sterling L. Smith

Subj: Pay For College Trainees and For Supervisors Not On Salary

Some time ago I was asked to determine the legally permissible methods of payment for these employees which provide minimum guaranteed weekly income, which hold additional payments for overtime work as low as possible, and which do not require inclusion of these employees in the retirement plans.

General Counsel Exhibit J-6

I have discussed this at length with Henry Sloan. Several alternatives are possible for each of these employee classes. There is possible no completely simple and foolproof plan—each plan has some restrictions which must be observed carefully if you are to avoid difficulty but I do not believe any of these restrictions are really complicated or burdensome. There is a fairly wide range of choice and I would think each mill could use whichever plan it likes the best.

Following is a summary of the available plans. I attach a discussion of each plan.

I. *Trainees*

A. *48-Hour Guarantee*—This is the plan Mr. C. G. Johnson covered in his memorandum of November 28, 1955. It is the best and simplest plan if you can in fact provide at least 48 hours of work every week, apart from regular holidays.

B. *40-Hour Guarantee*—This is probably too costly for us to use, but it is the only plan without any administrative complications. Those large companies we hear of giving trainees an unrestricted guaranteed flat salary probably use this plan.

C. *Fluctuating Work Week*—Under this plan you could make positive guarantee of a fixed weekly minimum with a probable average earnings of from 5% to 8% higher depending upon your mill's condition and the details of your specific plan selected.

II. *Non-Exempt Supervisors*

Any of the plans suggested for trainees could be applied to non-exempt supervisors.

General Counsel Exhibit J-6

III. *Exempt Supervisors*

All these plans involve payment of a stated amount per shift with a guaranteed minimum per week.

A. You can maintain today's earnings pattern with 6-day operation paying approximately 30% more than 5-day operation, with the normal 5-day earnings as the guaranteed minimum and avoiding any fluctuation in earnings for minor variations in working hours.

B. You could modify the present earnings pattern so that 6-day operation would pay only 20% more than the minimum guarantee for 5-day operation or less. Presumably this would be established with the minimum guarantee set at 83.3% of the present 6-day earnings rather than at the present ratio of about 77%.

C. Under either of these plans, whole or half-shifts beyond 6 could be paid for at the same rate as the 6th shift or at a higher or lower rate.

D. It would be inadvisable to narrow the differential between 5—and 6—day operation much, if any, below the level suggested in Plan B above.

I believe that these are all the alternatives which are practically available to us to do what we want to do. I will be glad to discuss this with you or any of your staff if you wish.

STERLING L. SMITH

Sterling L. Smith

SLS:de
Att:

General Counsel Exhibit J-6

EXPLANATION OF PLANS

I. *Trainees*

A. 48-Hour Guarantee—Last November 28th Mr. C. G. Johnson issued a general letter on the subject of "Trainee Agreement" to each mill manager with copies to the treasurers. This agreement used the term "salary". You might wish to change this to "guaranteed weekly wage". The agreement was a draft which could be modified as to days of leave permitted and, of course, with the correct figures inserted for the rate applicable to the individual man.

* * *

III. *Exempt Supervisors*

Most of your supervisors not on salary (second hands, shift overseers; etc.) can be classified as "exempt" under the Wage and Salary Regulations, apart from the present pay methods. Whether any individual so qualifies has to be determined by applying the regulations to the facts of his case, as you are aware.

The plans which meet this situation best are some variation of the plan which has been used for several years by Drayton. This is basically a payment of a stated fixed amount per shift with a guaranteed minimum per week.

* * *

Deering Milliken Service Corporation
Cost Department
P. O. Box 1698
Greenville, South Carolina
February 15, 1955

To: Cotton Mill Treasurers with copies to Managers and Superintendents.

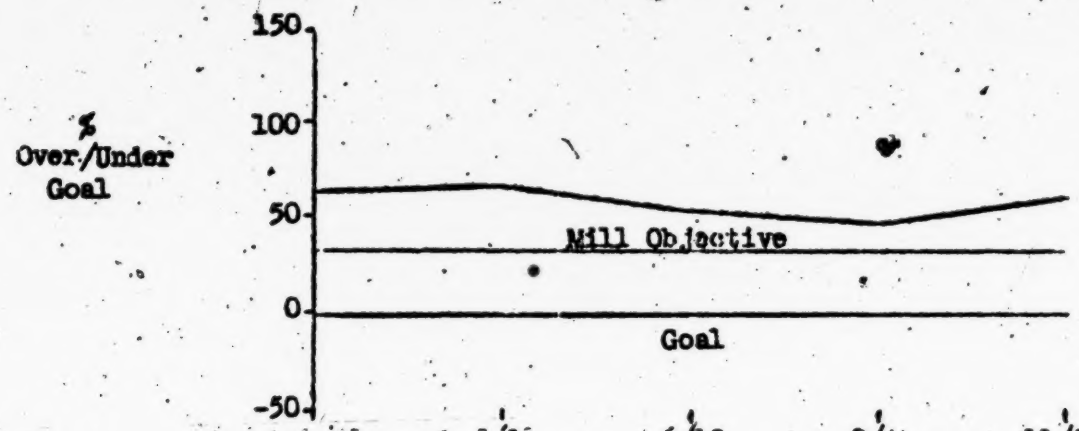
CC: Mr. Roger Milliken
Mr. H. C. Byrd
Mr. K. M. Lowry
Mr. Russell Newton

From: Sterling L. Smith

Subject: Fixer Section Supplies Report - Cotton - 12 Weeks to 11/30/55.

Detailed reports and charts are attached.

In this quarter, costs generally increased, wiping out the gains of the two prior quarters, as shown by the summary chart below.



to Managers and Superintendents.

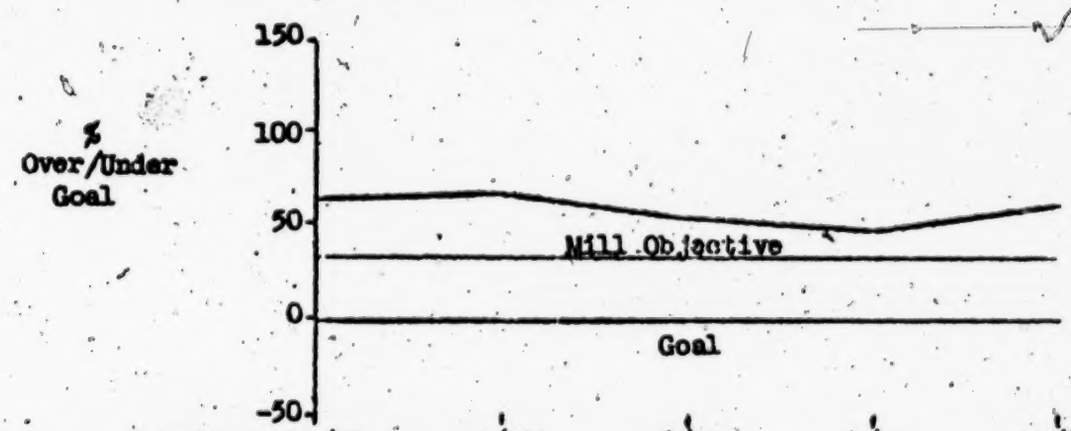
Mr. H. C. Byrd
Mr. K. M. Lowry
Mr. Russell Newton

From: Sterling L. Smith

Subject: Fixer Section Supplies Report - Cotton - 12 Weeks to 11/30/55.

Detailed reports and charts are attached.

In this quarter, costs generally increased, wiping out the gains of the two prior quarters, as shown by the summary chart below.



Quarter:	11/30	3/20	6/12	9/4	11/30	Year
Total Fixer Section Supplies:	$177,780	$232,960	$166,424	$157,196	$176,826	$733,406
Cost Per 1000 Loom Hours:	8.71	8.73	8.16	7.85	8.56	
Amount Over Goal:	70,384	93,575	58,654	50,780	67,672	$270,681
Improvement Over Base: (Annual Rate)	BASE	13,902	40,926	72,288	4,627	

It remains to be seen whether this was a temporary increase brought about by the preventive maintenance program and from which future large gains will result.

For the quarter, all mills showed increased costs except Ottaray and New Holland.

Over the year, cost reduction was shown by Gaffney (11%), Lockhart (10%), Monarch (22%), Ottaray (15%), and New Holland (5%). Others increased.

Gaffney and Monarch achieved their own 4th quarter objectives, Gaffney throughout the year and Monarch during the last three quarters.

Gaffney was below the "goal" level during the entire year by 15% ($7,790). The other Southern mills were over the goal by 5%---a total of $278,471---an average of $34,800 per mill.

SLS:mcj
Attach.

General Counsel Exhibit J-8

Deering Milliken Service Corp.
Cost Department
P. O. Box 1698
Greenville, South Carolina
March 29, 1956

To: Cotton Mill Treasurers with Copies to Managers and Superintendents.

CC: Mr. H. C. Byrd
Mr. K. M. Lowry
Mr. Roger Milliken
Mr. Russell Newton

From: Sterling L. Smith

Subject: *Fixer Section Supplies Report—Cotton—24 Weeks to 11/27/55.*

This half-year report shows improvement over the preceding half-year. *For the first time in three years,* the group total has achieved a new low level of cost—by a small margin—compared with levels reached at December 28, 1952. Four mills—Gaffney, Monarch, Gainesville and New Holland—are responsible for this break-through. Gaffney continues below goal as it has for several years. Monarch has been making steady improvement and is now down to 14% over goal. Darlington is just slightly above its 1952 level.

One thing struck me so forcibly I could hardly believe it. Only three mills are below the average of 45% while there are six above the average. It hardly seemed possible that this could be correct. I then discovered that the three below average—Darlington, Gaffney, and Monarch—averaged only 9.5% of goal. For the group this would mean an annual rate of only $47,125—an improvement of $175,676. In other words, this $175,000 annually is there waiting to be saved by these other six mills only by doing what the other three mills are now averaging.

General Counsel Exhibit J-8

Following are some comparative figures. Detailed sheets are attached.

	Performance Over Goal			
	24 Wks. to 11/27/55		12 Wks. To 12/28 1952	28 Wks. to 6/12/55 Annual Rate
	Annual Rate	%		
Darlington	$8,519	25%	23%	$12,086
Gaffney	4,095	8%**	3%	8,654
Hartsville	19,666	78%	62%	16,425
Lockhart	53,218	91%	88%	61,252
Monarch	11,750	14%**	52%	15,459
Ottaray	21,361	81%	65%	17,944
Monarch	(86,329)	(51%)		(94,655)
Gainesville	31,408	50%**	109%	52,251
New Holland	33,965	46%**	53%	34,092
Pacolet #3 and 5	40,726	59%	42%	54,323
Pacolet	(112,099)	(52%)		(140,666)
Total	$222,807			$255,178
Goal	496,057			477,705
% Over Goal	45%		56%	53%

** Below 1952
— Below Anything Since Sept. 1953

SLS:de

General Counsel Exhibit J-9

April 25, 1956

Mr. Roger Milliken
234 South Fairview Avenue
Spartanburg, South Carolina

Dear Mr. Milliken:

I am ashamed that I lost the thread of my thoughts yesterday and failed to include two things I most particularly wanted to say.

I have to be thankful to Bob Edwards for his initial interest and unwavering confidence in the fundamental values of this type of management tool and in my ability effectively to adapt it to the special circumstances of the various Deering Milliken mills.

Probably few know that Bob Edwards built the Johnston and McCormick cost systems strong enough to emerge from a period of great abuse, as useful tools for George Asnip and Ted Rice. And Ted—not a Cost man at the time—was able to do such valuable work at Gerrish Milliken and then carry this on in the Worsted Group because he could refer to Abbeville as a practical example.

Alan Sibley mentioned the influence of the Abbeville information on his thinking and Ray Collett has said the same thing.

Abbeville's unique trade has made it understandably difficult for many to see the relevance of the "Abbeville system" to their own circumstances. It would be ungrateful in the extreme for me to fail to recognize that Abbeville was the first proving ground for this approach in Deering Milliken. Without this experience I would probably not be here, and the one thoroughly skilled man now available to work on this project is Clyde Simmons, from Abbeville.

Jack Fisher mentioned the things which he and I think we did wrong. I meant to add that Jack's basic approach and the way in which he

brought his people along was the vital spark which made a success of what very easily could have become just another sterile paper-work procedure. This will be true at every mill.

Sincerely yours,

STERLING L. SMITH
Sterling L. Smith

SLS:de

CC: Mr. George Asnip
Mr. James M. Bailey
Mr. H. C. Byrd
Mr. Harry Defore
Mr. R. C. Edwards
Mr. Lewis C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher
Mr. K. M. Lowry
Mr. R. W. McCullough
Mr. J. A. Mishan
Mr. Minot Milliken
Mr. Russell Newton
Mr. J. J. Norton
Mr. J. M. Oeland
Mr. Ira S. Pitts
Mr. Horace Pratt
Mr. Alan B. Sibley
Mr. Garland G. Simmons
Mr. Marshall C. Stone

General Counsel Exhibit J-10

[Letterhead of]

DEERING MILLIKEN SERVICE CORPORATION
COST DEPARTMENT
P. O. Box 1698
Greenville, South Carolina

Confidential

To: Mr. J. M. Oeland

From: Sterling L. Smith

Subject: Standard Cost Program

Date: May 22, 1956

Copies to: Mr. K. M. Lowry

Confirming our discussion of May 16th, I believe that Don Barrett should be able to handle the installation of the cost and accounting procedures under the supervision of a staff man from this department. I think you are aware that we plan to have each one of our staff men handle installations at three mills simultaneously which is indicative of the amount of time we would be able to devote to your job.

This program will require the hiring of a man long enough before the start of the installation program so that he could be trained to take over almost all Don's existing duties. After completion of the installation, there would be a re-arrangement of work so that the purely clerical part of the work would be handled by others and Don would be able to hold down the job of Office Manager and mill Controller,

so to speak. He will continue to exercise close supervision over the cost as well as general accounting work and participate in management meetings concerned with cost and profit control. Between the cost of the man added and increases where jobs have become more exacting, your total added office costs will probably be about six or seven thousand dollars.

SLS:de

General Counsel Exhibit J-11

May 30, 1956

Mr. Sterling L. Smith
Box 1698
Greenville, S. C.

Subject: Standard Cost Program

Dear Sterling:

I appreciate your letter stating that you feel that Don Barrett should be able to handle the installation of the cost and accounting procedures under the supervision of your staff man.

We are very anxious to work with you on the proper timing of this change. We have Mr. C. L. Watford who presently is handling our accounting here who feels that he could take on some additional duties. Previous to his being placed in charge of the accounting he worked with Mr. Barrett on cost and knows something about this work. It is my opinion that if we could secure a competent girl capable of doing stenographic work, that we would be better strengthened in our organization than if we hired an additional man. This person could take off of Mr. Watford the paying of all invoices and could keep most of the routine books. Mr. Watford in turn can take over the responsibilities Mr. Barrett is handling on cost. This would free Don Barrett to work with your department in installing the new program.

I did not get clear whether we should proceed on this part of the program before securing additional personnel in the standards department to do the time study work. Mr. Hawkins is checking with several sources to secure the men we

anticipate needing on time study work. I realize it is like whistling in the dark, but at the same time it would be very helpful if we could secure one man who has had some training along this line in order to move along some faster with the big job we have here of studying each job in the plant. I do want you to know that we are working on this and would appreciate your letting me know whether we should immediately proceed to make the necessary changes to free Mr. Barrett and install this part of the program at the present time.

Very truly yours,

J. M. OELAND
Treasurer

jmo:m
cc: Mr. Lowry

General Counsel Exhibit J-12

[Letterhead of]

DEERING MILLIKEN SERVICE CORPORATION

COST DEPARTMENT

CONFIDENTIAL

P. O. Box 1698

Greenville, South Carolina

July 13, 1956

Mr. J. M. Oeland
Darlington Manufacturing Company
P. O. Box 514
Darlington, South Carolina

Dear Jim:

Because of your urgent desire to get started on the standard cost program, I want to tell you just where we stand.

Right now the time of Clyde Simmons—the only man I have qualified to supervise this work—is fully committed to the program at Judson and Ottaray. Judson has first priority as being already underway at the time of the meeting, and Ottaray was approved as the pilot installation for the Cotton group. As a matter of fact, the detailed work schedules we have prepared for these two mills call for more than Clyde's total time. So it is literally impossible for him to spend even half a day with any other mill without letting these two promised programs fall behind.

We have in training on the Judson program one mature man with cost background whom we were able to find within the DM organization; namely, Henry Hinton. Henry has been showing execellent progress during the two months he has been on the Judson program but it will be several

months before it will be prudent to assign him to supervise any new installation.

Since before the meeting which approved the program, we have been beating the bushes by all means, including three excellent personnel organizations, trying to find qualified men in the market. Our results to date are that we have two excellent prospects whom I hope to have signed up within the next week or two. But at best it will be two months before they have come with us and assimilated enough of our specific business and program to be assigned to supervising new installation programs.

While we are marking time, so to speak, waiting for the availability of qualified men, I will be working on certain forms and procedures which will be basic to the installations at all mills and likewise on certain policy decisions and will transmit these to your mill by the proper means as rapidly as they become completed. It is probable that the most satisfactory method will be to have a small meeting of representatives from the mills which will next take up the program.

I realize that it is galling to have to wait and seemingly sit idle and let time slip through your fingers. However, I have been through this same thing many times before and feel sure that waiting to do the job properly with qualified personnel, rather than rushing ahead under forced draft will give you the final results quicker, cheaper, and with much less confusion and friction.

* * *

Yours sincerely,

STERLING L. SMITH

Sterling L. Smith

SLS:de

CC: Mr. K. M. Lowry
Mr. Roger Milliken
Mr. A. B. Sibley

General Counsel Exhibit J-13

July 19, 1956

Mr. Sterling L. Smith
P. O. Box 1698
Greenville, S. C.

Dear Sterling:

We have your letter of July 13th stating that it will be from two to three months before we can actively start on our standard cost program at our mill. I am sorry that we jumped the gun as it was my understanding when you and Ken were here that we should immediately make plans to employ an extra person in the accounting department and two additional time study men. We found available a recent college graduate that we felt could handle the situation in the accounting department and went ahead and employed this person. At the present time we have made an offer to a man with some experience in time study work and are hoping that he will come with us. It is my understanding that we can go right ahead studying all the jobs in our plant and thus have available the budget to use in the standard cost system.

We note in your letter that you are working on drafting certain forms and procedures that will be basic to the installation in all mills, as well as certain policy decisions, and state that as soon as these are completed you will transmit them to our plant. We will look forward to receiving them. It is my thought that a lot of the procedure for gathering information will have to be set up in our plant and perhaps we could go ahead on making installa-

tion of these procedures. You do not state that we can expect the complete procedures you are presently working on but trust it will not be in the too distant future. It is my idea to send Don Barrett to Ottaray Mill and spend the day going over what is being accomplished in the plant there. If we could proceed with setting up plans for collecting the information we could get these installed in our plant and then be ready for budget comparisons, etc. when this phase of the work is installed by your men.

We would appreciate a word from you as to whether you feel we should continue along these lines, or had we better hold to everything for two or three months.

Very truly yours,

J. H. Oeland
Treasurer

Jmo-m
cc: Mr. Milliken
Mr. Lowry

General Counsel Exhibit J-14

Deering Milliken Service Corp.
Cost Department
Box 1698
Greenville, S. C.
August 21, 1956

To: Messrs.	D. W. Barrett	T. N. Hunnicutt	Les Pugh
	R. L. Collett	B. C. Jarrard	Francis N. Mabry
	R. B. Dozier	H. W. Krackenberger	J. W. Ouzts
	J. E. Ferguson	A. I. Lindblom	E. A. Rice
	Paul C. Franklin	L. E. McAlpine	A. C. Sorensen
	J. A. Garner	J. A. McArthur	H. A. Sturkey
	C. B. Gentry	Clyde Murchison	W. Fred Swann
	J. L. Hawrick	Nils Nielsen	W. Fred Williams
CC: Messrs.	E. G. Allee	H. G. Hester	I. S. Pitts, Jr.
	C. E. Anderson	C. T. Holland	H. L. Pratt, Jr.
	George Asnip	J. M. Jackson	H. B. Risher
	J. M. Bailey	T. C. Jolly	J. V. Roberts
	D. I. Beal	W. S. Manning	A. B. Sibley
	Phillips Byfield, Jr.	J. A. Meehan	W. A. L. Sibley
	S. J. Craig, Jr.	W. H. Moore	G. G. Simmons
	E. O. DeFore	A. G. New	M. C. Stone
	L. C. Ellis	J. J. Norton, Jr.	F. A. Thompson
	J. A. Ferguson	J. M. Oeland	W. E. Thrailkill
	L. J. Fisher	R. C. Owings	M. G. Wallace
	W. F. Garth	T. E. Peden	
CC: Messrs.	T. H. Bush		Minot K. Milliken
	H. C. Byrd		Roger Milliken
	Harry Defore		Russell Newton
	E. F. Flanigan		T. D. Truluck
	C. G. Johnson		
	K. M. Lowry		

From: Sterling L. Smith

Subj: Standard Cost Installation Program

Several Treasurers and Mill Managers have recently asked me to discuss with them the main points in the new standard cost system—its objectives and its principal operating features. Following this, it has seemed desirable to provide something in writing for reference and possibly for discussion with other members of the organization.

I will prepare something specifically covering our program. But for immediate use I am enclosing a copy of a paper which I prepared for a cost accounting group which covers the outlook and main features underlying our program. Some of you may already have seen this. Clearly, this is not merely a cost or an accounting system. Rather, it is a vital part of a full method of management. As such, it requires for its successful use a thorough understanding on the part of everyone concerned—cost and accounting personnel, Industrial Engineers, and—most of all—all line supervision from second hands or assistant overseers up. Experience will be the best teacher, but experience must be supported and illuminated by repeated and varied explanation. An important part of this department's service to you will be discussions with your personnel at the proper time in relation to your installation program, and in suitable groups. Also, we will be glad to provide additional copies of this paper if you wish to give it to any or all of these men.

The program will, in almost every instance, call for a broader outlook on the part of your cost and accounting personnel. At a number of mills there is at least one member of the National Association of Cost Accountants. I have belonged to NACA for many years and believe it well worthwhile. Its monthly Bulletin is particularly good, as it carries eight or ten articles on varied subjects by working cost accountants. Within reach of each of our mills, there is also an active chapter which holds nine regular monthly meetings, each with a worthwhile talk followed by a discussion period. There are also other constructive activities such as plant visitations and concentrated educational sessions. The nearby chapters are at Atlanta, Columbia, and Western Carolinas—which latter meets variously in Greenville, Spartanburg, Hendersonville and Ashville.

For a personal membership, the initiation fee is $10.00, the annual dues $20.00 and the cost of a dinner meeting from $2.75 to $3.50. With travel expense, this last would probably average about $10.00. If you and any of your accountants are interested, I would recommend that

the individual pay the $20.00 annual dues himself and that the company pay the initiation fee and any current expenses. This means that the man has to show an interest to the extent of $20.00 of his own money for the company to be put to any expense. And, beyond the initial $10.00, the company would incur expense only as the result of active participation by the individual. I have used this plan with good success elsewhere.

General Counsel Exhibit J-15

Deering Milliken Service Corporation
Box 1698
Greenville, South Carolina
September 4, 1956

To: Messrs. Fred Anthony
D. W. Barrett
B. E. Burns
R. F. Cecil
L. A. Clements
R. B. Dozier
Paul C. Franklin, Jr.
C. B. Gentry
J. Everett Hicks
T. N. Hunnicutt
B. C. Jarrard
H. W. Krackenberger
L. E. McAlpine
T. E. McAlpine
Francis N. Mabry
Nils O. Nielsen
J. W. Ouzts
A. C. Sorensen
H. A. Sturkey
W. Fred Swann
Harvey Welborn
W. Fred Williams

CC: Messrs. E. G. Allen
C. E. Anderson
George Asnip
J. M. Bailey
D. I. Beal
Phillips Byfield, Jr.
S. J. Craig, Jr.
E. O. DeFore
Lewis C. Ellis
J. A. Ferguson
L. J. Fisher
W. F. Garth
H. G. Hester
C. T. Holland
J. M. Jackson
T. C. Jolly
W. S. Manning
William H. Moore
J. A. Meehan
Alfred G. New
J. J. Horton, Jr.
J. M. Oeland
R. C. Owings
T. E. Peden
I. S. Pitts, Jr.
H. L. Pratt, Jr.
H. B. Risher
J V. Roberts
A. B. Sibley
W. A. L. Sibley

General Counsel Exhibit J-15

G. G. Simmons	H. G. Wallace
M. C. Stone	A. C. Wiesner
F. A. Thompson	W. E. Thrailkill

CC: Messrs.

R. H. Bush	J. A. McArthur
E. C. Byrd	Roger Milliken
R. L. Collett	Minot K. Milliken
Harry Defore	Clyde Murchison
E. F. Flanigan	Russell Newton
J. L. Hamrick	E. A. Rice
C. G. Johnson	T. D. Truluck
E. M. Lowry	

SLS:de

Deering Milliken Service Corporation
Box 1698
Greenville, South Carolina

To: All Office Managers

FROM: Starling L. Smith

SUBJ: Standard Cost Program—Instructions

Date: September 4, 1956

CC: As Listed

Smooth operation of the engineered cost system at each mill requires the use of some forms and written instructions. We are all aware of the advantages of a sensible degree of uniformity in forms and practices (between mills). It will clearly mean big savings in time and money for us to

provide recommended standard forms and practices from the very beginning of this program.

We recognize that it rests with the management of each group to decide on the adoption of any recommended standard practice but suggest that variations should be made only after careful consideration. This will be most important when it effects the results—the meat of the information to be provided, less so in purely procedural matters—which affect mainly the clerical cost. We will always try to provide forms and practices with enough flexibility or variation to cover the small mill and the large, the simple mill and the complex one. We will not always succeed on our first attempt. Further, many mills will need to write instructions covering special local situations. We hope these will prove to be merely clarification of the basic practice.

We propose to index our instructions as issued so that they will form a complete Cost Manual. We suggest that any mills now maintaining procedures books can incorporate this Cost Manual in their own books by reference. The Cost Manual will not repeat instructions applying to General Accounting, Industrial Engineering or other departments —but it will cover the linkage of Cost Accounting with these other functions where necessary.

We propose to issue one copy to each mill, addressed to the Office Manager, and one copy each to Mr. Flanigan, Mr. Lowry and to Mr. Collett. If any copies other than these scheduled are desired as a matter of routine, please instruct us. As a matter of routine, an additional copy will be provided at each mill for use by the mill Industrial Engineers, of those instructions covering the linkage of Industrial Engineering and Cost Accounting. We will always be

able to provide a controlled number of additional copies upon request.

Each set of instructions issued will be numbered so that we can recall superseded instructions when they are revised or cancelled. Only in this way can we be reasonably sure that everyone concerned has the up-to-date instructions for there will naturally be changes as better and cheaper methods continually develop.

These instructions will be issued on 8¼ x 11 sheets with standard three-hole punching. We recommend that these be kept in post binders, as frequent use quickly tears them out of ring binders. The easily expandable post binder supplied us for Deering, Milliken instructions years ago has proved very satisfactory. I see that this is a Wilson Jones No. 564-44. Probably Mr. Sanders in Purchasing can arrange an attractive bulk purchase for those who send in requisitions marked "Post Binder for Cost Department Standard Practice Instructions". I will advise him to be prepared for this.

I will put this into effect on September 15th exactly as above, subject to any changes suggested before that date.

SLS:de

SLS

General Counsel Exhibit J-16

Deering Milliken Service Corporation
Cost Department
P. O. Box 1698
Greenville, South Carolina
January 19, 1955

CC: All Personnel Managers
Mr. G. G. Johnson
Mr. K. M. Lowry
Mr. Roger Milliken
Mr. H. C. Byrd
Mr. R. B. Newton

To: All Treasurers, Managers
and Superintendents.

From: Sterling L. Smith

Subject: Unemployment Insurance
—Second Half of 1954.

Enclosed is the summary report showing for the third and fourth quarters the "Probable Cost of Benefit Payments as a Percentage of Taxable Payroll". For the South Carolina mills in total, this has progressively dropped from the extremely high figure of the second quarter and is now back to the level of the first quarter. The total probable cost arising from separations made in 1954 is $345,000. This compares with the actual cost of $40,000 for 1953. The actual benefits charged through September 30, 1954 are $165,000. The benefits charged lag somewhat more than one quarter behind the date of separation, which means that we will not know the full actual figures until we receive the State report covering the first quarter of 1955, which will

be available in May. But the actual charges for the group as a whole are running pretty much in line with our estimates and we can hardly hope for a figure below $300,000, and more likely, the $345,000 estimated.

About 85% of this arises from lay-offs for lack of work. Most, but not all of these, have seemed unavoidable because of reduction in net personnel as indicated by the annual turnover report. There continue to be some lay-offs which appear avoidable by planning of work schedules and personnel transfers.

In reports for previous years, I had noted that only about 50% of lay-offs resulted in claims allowed and paid because the other half quickly found other work, or did not want to work, and thus had no allowable claims. At that time, it seemed likely that our costs would double if business became worse and job openings scarcer, even though our own personnel situation remained unchanged.

This anticipated situation actually developed in 1954. 90% of those laid off already have had their claims allowed and almost all of these have started drawing money. Thus, if we had continued in 1954 our 1953 low percentage of separations. the cost would have risen from $40,000 to $70,000. Such an increase is largely out of our control. But our cost has risen to almost five times this figure, approaching the high cost in 1949 which alarmed us and started us working on this problem.

There is a strong indication that not all of the 1954 high cost is due to the personnel reductions. It seems that there has been a serious loss of our effectiveness in dealing with this situation:

General Counsel Exhibit J-16

In 1953, 2.5% of discharges resulted in allowed claims. It is reasonable to expect that the "pay-out" would increase here in the 50% /90% ratio as with the lay-offs—or an increase to 4.5%. Actually, the figure was 10.2%—more than double the expected. For quits, the 1953 figure was .2%, which I adjust to .35% as directly comparable to 1953. The actual was 2.1%, or six times as high. In total, this meant that we had 98 allowed claims for discharges and quits vs. 30 on the basis comparable with 1953. This increase of 68 allowed claims will probably cost us $24,000. It also seems probable that some part of the lay-offs and their costs could have been avoided if we had been as effective in 1954 as we were in 1952 and 1953.

SLS:mcj

Enclosure.

1/19/55.

UNEMPLOYMENT COMPENSATION REPORT
Year to 12/31/54 - Part I

Mill	"Probable Cost" - % of Taxable Payroll								1954
	1953				1954				
	1st Qr.	2nd Qr.	3rd Qr.	4th Qr.	1st Qr.	2nd Qr.	3rd Qr.	4th Qr.	
Cotton									
Darlington	.24%	.41%	.08%	.08%	.08%	.08%	.34%	.17%	
Gaffney	-	-	-	-	-	.05	-	-	
Hartsville	.18	-	.08%	-	-	.34	.52	.35	
Monarch									
Lockhart Power	-	-	-	-	-	-	-	-	
Lockhart	-	-	-	-	.06	-	-	-	
Monarch	.05	.25	-	-	.02	.32	.05	.06	
Ottaray	-	-	-	-	-	-	-	-	
Pacolet #3 & #5	-	.10	-	.10	.10	.11	.11	.04	
S. C. Cotton - Average	.05%	.11%	.01%	.04%	.03%	.13%	.12%	.06%	
Ga. - Gainesville	.06(.06)	.18(.18)	.12(.06)	.48(.12)	.24(-)	.12(.06)	.30(.18)	-(-)	
New Holland	.22(.11)	.28(.14)	.13(.04)	.20(.07)	.31(17)	.20(.14)	.14(.11)	.17(.13)	
Ga. - Lockwood				.06	5.64	.44	-	-	
Rayon & Woolen									
Clemson	-	-	.12%	-	-	.35	1.43	-	
Drayton	-	.14	.13	.08	.20	.02	.20	.80	
Gayley	-	-	-	-	8.60	8.39	1.32	.79	
Gorrish Milliken	.56	.22	.32	.72	.65	1.86	.14	.28	
Judson	.02	-	.05	-	.08	1.00	2.94	.90	
Laurens	-	.05	.01	.18	1.15	4.19	1.30	.48	
Abbeville(& Woven Plastics)	.32	.19	.11	.04	.21	.58	.34	.95	
Johnston	-	-	-	-	.19	9.39	12.79	1.03	
McCormick	.20	.07	.07	.07	2.36	.56	.49	.49	
Excelsior Finishing	1.62	1.40	.89	.26	.74	8.02	1.58	.14	
Excelsior Union	.39	.40	.37	1.16	.41	.74	1.86	1.45	
S. C. Rayon & Woolen - Average	.20%	.15%	.13%	.15%	.74%	2.27%	1.94%	.72%	
Ga. - Kingsley	-	.23(.23)	.11(.14)	-(-)	-(3.5)	-(1.4)	-(.21)	.91(.91)	
N.C.-Rutherfordton	1.50	-	.42	.93	-		1.96	.53	
Hatch (& U.P.C.)	.73	.17	-	9.18	3.53				
S.C. Total - %	.14%	.13%	.08%	.09%	.47%			.45%	
Cost					$47,000	$141,000	$112,000	$45,000	$345,000

Note - Georgia Mills - Figure in Brackets compares more correctly with S. C. Mills.
Red Figures indicate significant increase or more than double the average.

General Counsel Exhibit J-19

Deering Milliken Service Corporation
Cost Department
P. O. Box 1698
Greenville, South Carolina
February 28, 1955

CC: Mr. Paul Wilson, Jr.
Mr. R. L. Collett

To: Mr. Roger Milliken
Mr. W. B. D. Stroud
Mr. M. W. Beacham
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. E. H. Hines
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

From: Sterling L. Smith

Subject: Unemployment Compensation Insurance.

Presumably you have received Henry Sloan's bulletin of February 26 on this subject. As a result of Henry Sloan's phone call to Judson about this, I have phoned John Cauthen and learned that we should receive from him this week copies of the proposed amendments and some comments.

John Cauthen quoted to me some estimates from the Commission bearing on the probable increase in cost to the textile industry which the changes would cause. A superficial analysis leads me to believe that the Commission's

figures (about 65%) are in error and that Henry Sloan's figure (about 50%) will prove more correct. This is just a somewhat informed guess intended only to point out that the situation may call for some detailed analyses of our past experience.

As soon as I have received John Cauthen's bulletin and have had a chance to digest it, I will write further with specific suggestions. At this time you might alert your personnel departments to have in good shape the files on each terminated employee who drew benefits. They will particularly want to have the records of past earnings by quarter as the new law provides that the duration of benefits may vary from 10 weeks to 22 weeks, depending upon the qualifying earnings. I do not have the formula yet.

I understand that there are some amendments which we would definitely favor, notably setting up the reserve requirements along the lines our group advocated two years ago.

SLS:mcj

General Counsel Exhibit 20

Deering Milliken Service Corporation
Cost Department
P. O. Box 1698
Greenville, South Carolina
April 22, 1955

To: All Personnel Managers

From: Sterling L. Smith

Subject: *Unemployment Compensation Insurance Report.*

The forms enclosed for the unemployment reports covering the March 31 quarter, and also for the June 30 quarter are to be submitted as usual. I have already received a number of the Part I for March 31.

In the future please send us only one copy. We no longer need two copies.

S. L. S.

SLS:mcj
Enclosure.

General Counsel Exhibit J-21

Deering Milliken Service Corporation
Cost Department
P. O. Box 1698
Greenville, S. C.
May 31, 1955

CC: Personnel Managers
Mr. C. G. Johnson
Mr. Roger Milliken

To: Treasurers & Managers

From: Sterling L. Smith

Subject: *Unemployment Compensation Insurance.*

The Part I reports for the 1st quarter indicate that there has been some serious increase in Lay-offs after allowing for personnel reduction and in Allowed Claims beyond this. This seems serious enough to warrant comment before sending out the next report (which, as you know, I am now instructed to submit each six months).
Mills which are particular cases in point are:

	Lay-offs	Claims Allowed Due To
Darlington	1	
Hartsville	3	
Lockhart	—	2 Layoffs
Monarch	1	
Pacolet 3 & 5	2	
Pacolet 6	1	
Lockwood	6	
Gayley	9	1 Discharge—Other
		1 Quits—Various
Gerrish Milliken		5 Discharge—Other
Judson		1 Discharge—Other
Kingsley	2	

General Counsel Exhibit J-21

	Lay-offs	Claims Allowed Due To
Abbeville	10	
McCormick		12 Discharge—Other
Excelsior Finishing	24	
Excelsior Union	22	
Hatch	6	
Totals	87	22

Where Lay-offs are noted above, the net or temporary reduction reported was less than half the reported total of discharges, quits and transfers during the quarter. Past reports have shown this to be the critical point, below which lay-offs are avoidable in a high percentage of cases.

S. L. S.

SLS:mcj

General Counsel Exhibit J-22

Deering Milliken Service Corporation
Cost Department
P. O. Box 1698
Greenville, South Carolina
August 22, 1955

CC: Personnel Managers
Mr. Roger Milliken
Mr. C. G. Johnson
Mr. K. M. Lowry

To: Treasurers, Managers &
Superintendents

From: Sterling L. Smith

Subject: Unemployment Compensation Insurance
6 Months to June 30, 1955.

The attached report relates to 1954 as well as to the latest 6 months.

Actual benefits charged to S. C. mill accounts in 1954 totaled $228,652. This is only about two-thirds of the "probable cost" I had estimated in January. Of course, a significant part of the benefits chargeable because of 1954 separations will be paid in 1955 (and even 1956).

In the first quarter of 1955, these added costs amounted to about $23,000. The reports for the second quarter will presumably show a further addition, after which 1954 can be considered closed for practical purposes. (Where these actual figures have been received, they are shown.) 1955 is starting out much higher than any year between 1950 and 1953. I have noted the main reasons for any high figures.

General Counsel Exhibit J-22

Layoffs—Means separations for lack of work, more than seem occasioned by the reduction in work force.

"Other" Discharges—From these unclassified discharges, our experience has been that only about 1 in 20 will become an allowed claim. Worse experience bears looking into.

SLS:mcj
Attach.

Unemployment Compensation Report

	Cost % of Taxable Payroll				
	Year 1954		1955—1st 6 Mos.		
	Estimated Probable	Actual	Estimated Probable	Actual	Causes
Cotton					
Darlington	.17	.12	.09%	.06%	
Gaffney	.01	—	—		
Hartsville	.30	.11	.13%		Layoffs
Lockhart Power	—	—	—	.00	
Lockhart Plant	.01	.01	.06%	.03	
Monarch	.10	.11	—	.00	
Ottaray	—	—	—	.00	
Pacolet 3 & 5	.08	.10	.06	.05	
S. C. Cotton Average	.10%	.07%	.05%		
Ga.—Gainsville	.17(.06)	.21	.42(.40)		
New Holland	.20(.13)	.11	.21(.17)		
Rayon & Woolen					
Exc. Clemson	.43	.40	.00		
Drayton	.54	.64	.50	.42	Layoffs
Gayley	5.16	3.53	.26		
Gerrish Milliken	.72	.43	.48		"Other" Discharg
Judson	1.18	.89	.17	.36	
Laurens	1.80	1.23	1.07	.45	1954 & Reduction
Abbeville (& W.P.)	.52	.09	.31	.46	
Johnston	7.10	5.53	.14	.57	
McCormick	1.00	.36	.59	.24	"Other" Discharg
Exc. Finishing	2.48	1.85	.48%		
Exc. Clemson	1.03	.53	1.56%		
S. C. Rayon & Woolen Average	1.37%	1.03%	.52%		
Ga.—Kingsley	2.06(2.06)	2.20			
N. C.—Rutherfordton	.62				
Hatch	1.28				
S. C. Total	.85%	.65	.33%		
Cost	$345,000 Est.	$228,652			

Note: Actual is underlined if higher than estimated.

General Counsel Exhibit J-23

Deering Milliken Service Corporation
Cost Department
P. O. Box 1698
Greenville, South Carolina
March 11, 1955

CC: Mr. J. J. Norton, Jr., Gaffney
Mr. J. M. Oeland, Darlington
Mr. W. A. L. Sibley, Monarch
Mr. M. C. Stone, Pacolet
Mr. H. D. Mullins, Pacolet Recheck

To: Mr. A. J. Dillard, Jr.
Mr. W. Frank Dohme

From: Sterling L. Smith

Subject: Competitive Recheck.

There has been considerable difficulty and substantial loss in disposing of competitive goods similar to our own constructions, but at the same time quite a bit different in width, weight, sley and picks, and pattern (as a herringbone).

In the future, will you please restrict all purchases of competitive goods to the constructions we are currently making, unless a specific departure is requested by the treasurer concerned?

General Counsel Exhibit J-24

Deering Milliken Service Corporation
Cost Department
P. O. Box 1698
Greenville, S. C.
July 11, 1955

To: Mr. J. J. Norton, Jr., Gaffney
Mr. J. M. Oeland, Darlington
Mr. W. A. L. Sibley, Monarch
Mr. M. C. Stone, Pacolet

From: Sterling L. Smith

Subject: Competitive Recheck.

Attached is the schedule proposed by the Sales Department for competition goods to be rechecked in the next twelve months.

Recheck capacity for this type of competition goods is approximately 112 lots per year. You will note that this schedule specifies 82 lots, leaving 30 lots to be assigned at later dates as special interest may develop. Each competitive recheck lot consists of two bales.

* * *

General Counsel Exhibit J-24

July 11, 1955.

PRINT CLOTH - PROPOSED COMPETITIVE LOTS FOR RECHECK
Year 1955/56

	Cannon (Alice)	I. J. (Borien)	Wood.Bald.(Abney)	Cone (Am. Spin.)	Greenwood (Durst)	Spartan (Spartan)	Turner H.(Morgan)	Reeves (Mills)	Bailey (Mayfair)	Leslie (Poe)	Clinton	I. J. (Woodside)	Hesslein	Cat.Far.(Henrietta)	Leslie (Washington)	Joanna Western	Cannon (Inman)	Avondale (Spofford)	Bailey (Glenwood)	TOTAL SAMPLES
39" 4.00 80x80	4	4	2	2	12	2	2	2	2	2										34
39" 4.75 68x72			2								2	2	2	2					2	12
38½" 5.35 64x60			2									2		2	2	2				10
45" 4.75 64x56									2		2	2								6
45" 5.35 60x48												2				2				4
37" 4.00 100x58		2	2														2	2		8
40" 3.33 109x58		2	(2)														2			6
37½" 3.90 99x44			2																	(2)
TOTAL SPECIFIED	4	8	12	2	12	2	2	2	4	2	4	8	2	4	2	4	4	2	2	82
AVAILABLE OPTIONAL																				30

Each Sample Equals 2 Bales.

Figures Indicate Samples to be Purchased.

Arcade

General Counsel Exhibit J-25

July 14, 1955

Mr. Sterling L. Smith
Box 1698
Greenville, South Carolina

Subject: Competitive Rechck

Dear Sterling:

In going over the proposed schedule of competitors' goods, as far as Darlington is concerned. I would like to suggest two changes.

Instead of buying Woodward-Baldwin (Abney) 40" 3.33 109x58 I would suggest that we buy Arcade. As I travel around more reference is made to Inman, Borden, and Arcade as to quality than to Abney.

I would like to suggest that we discontinue competitors' goods on 37½" 3.90 99x44 poplins. We have cut down on the number of looms we are running on this style at the moment and I do not see any particular reason for checking competitors' goods, especially Abney's. I will be glad to be guided by Mr. A. L. May's wishes in this matter, and you will note I am sending him a copy of this letter.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m
cc: Mr. A. L. May

General Counsel Exhibit J-26

Deering Milliken Service Corporation
Cost Department
P. O. Box 1698
Greenville, South Carolina
June 28, 1955

CC: Mr. Harry DeFore
Mr. A. J. Dillard, Jr.
Mr. J. J. Norton
Mr. J. M. Oeland
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. R. B. Newton

To: Mr. Roger Milliken

From: Sterling L. Smith

Subject: Quality Control—
Yours of March 15 (80x80).

Since my May 31 report. we have made considerable progress.

(1) We have received back the finished goods on our second 80x80 test. Recheck department has gone over them, but I have yet to see the goods and the results.

(2) The goods are selected for a similar test in Gaffney broadcloth, but we are having difficulty getting an early finishing date.

(3) We have made further experiments to see if finished streakiness can be predicted from the greige. Our results continue good. We plan to set up a session with mill superintendents in July to consider this.

General Counsel Exhibit J-26

Eliot Miller has reported that Cranston (Rhode Island) felt this was definitely practical. He and I visited there about ten days ago. This was one of the tests and they very readily correlated the greige samples we had with the finished samples from the same freight goods.

(4) One of the interesting points which came out at Cranston is that sizing formula can have a considerable bearing on the finishing results. They went so far as to say that a significant part of the adverse appearance of the Monarch goods in the test Cranston ran might have been due to Monarch's sizing being different from that in the other goods, and from that for which Cranston's desize process was best. Because of other characteristics of the cloth, none of us believe this to be the real reason, but it is not an impossibility.

They went on to say that in some tests there was definitely finishing difficulty which they attributed to some after affect of the size, even though the size had been entirely removed according to their chemical analysis. They feel definitely that we should not leave the effect of size and finishing result to chance; but should explore this far enough to know what works well and what causes trouble.

As far as I know, we may be completely informed on this subject at the moment. I merely report this suggestion for what it is worth.

(5) At Cranston we saw a variety of cloth samples, including some 80x80 of various dates from our own mills.

This, in conjunction with I.T.T. results mentioned below, indicates almost conclusively that the Monarch

goods used in the (Cranston) test were made during the very short period of low quality. Cranston's greige samples of Monarch goods received a couple of months earlier were much superior to the goods used in the test. There was no thought that this was anything but a chance happening. Looking back at the Monarch recheck records before, during, and after this period, certain characteristics showed a definite deterioration and have since improved. It is unfortunate that this test included almost certainly the worst level of goods Monarch has made in over a year, at least.

(6) At I.T.T., I ran a number of samples on the Colorimeter to try to classify the cloth as to color, hoping for a classification which would correlate with brightness and cleanness of color in the finished goods. The tests showed a very good correlation. This is by no means conclusive proof as all we can really say is that there is a coincidence which is reasonable in this limited number of cases.

The next thing for us to do is to try to get a somewhat different calibration for the machine to give closer reading within the range we are using, and then to arrange for more extensive tests.

The most interesting test result was in Monarch's 80x80. Samples from April and August 1954 showed almost identical color with Alice and Durst goods which finished so well. But Monarch goods from February and March of this year showed a substantially inferior color. Monarch clearly knew the specific changes in blend that they were making over this period, but they presumably would not have made these same changes

had they known the adverse effect on the appearance of their goods when finished. This indicates that this test may be a very useful "back stop" to other more specific tests.

(7) As to controlled finished goods tests for routine use. Mr. Newton has effectively discouraged my thought that something on a laboratory basis might be practical. We now believe that the best thing would be occasional test lots of 1,000 yards commercially finished. This would include 20 or 25 single cuts random selected from different looms so that we would have a real cross section. We can do this with a maximum net cost of the finishing and freight, possibly less. Mr. Bill Sibley and I have discussed this and feel that we should wait until all of our tests in the greige indicate our goods are up at a high quality level. Then, such a test would probably be a very good selling tool beyond its recheck benefits.

(8) At I.T.T., I had one test run on Tewksbury's Optical Analyzer. This showed excellent correlation between grey and finished yarn CV. But the test seems too slow for Recheck use. I consider this a device for use in research and development of new processes.

(9) At I.T.T., I also checked the Beckman color analyzer. This is probably a device for finishing plants in developing exact color matches in new formulas and the like. I can see no use for it on grey goods.

General Counsel Exhibit K-1

Mr. J. M. Oeland	March 1, 1956
J. Z. Robinette	Mr. W. A. Goodwin
Darlington Manufacturing Co.	Mr. W. S. Hawkins

The following items were discussed at the meeting at Darlington February 29, 1956:

1. Conveyer Proposed from Engineered Producers:

   Mr. Park will make the changes outlined in my letter to Mr. Bruce White dated February 20, 1956. The first doors that cover the conveyor opening will be furnished and installed by Mr. Park after the details have been worked out and approved by F.I.A. Mr. Park will quote on these doors as an extra.

   Mr. Goodwin has ask Mr. Park to relocate the conveyor and after this has been done, we will discuss same with American Moistening Company concerning interference with the air stream from the fan units.

2. Addition between Main Mill and Annex:

   We will design the structure and secure prices on the steel. This will be for all floors. You will handle the remainder of the construction.

3. Fire Pump:

   We will secure prices for the automatic fire pump starter and booster pump and starter and you will install this equipment.

It will be decided in the next two or three months how the other sprinkler work is to be handled. This will be either on a cost plus basis or by your own shop.

General Counsel Exhibit K-1

4. Boilers:

The following alarms will be installed on the boilers by Mr. Jack Hancock:

a. ? ? ? ? ? clutch trip

b. Low water

c. Low steam pressure

This alarm will be a bell in the shop that will sound a warning when either of these items fail to operate properly.

I will ask Mr. Comstan if he can give you an idea how much a coal conveyor would cost to replace your existing conveyor. You can then let him know if you would like to do anything further on this.

5. Trash in Atomizer Water:

I have discussed this with Mr. Blanton of the American Moistening Company. He will let us have his recommendations as soon as the test they are now running is complete. If necessary at that time, we can discuss the addition of a water filter.

6. Air Compressor:

You found that the air compressor at Dumis Mill was a low pressure unit, therefore we will do nothing further on this.

7. Water Pump at Stream:

You have worked out this problem. The reservoirs will be left as they are at present.

General Counsel Exhibit K-2

January 25, 1955

Mr. R. H. Bush
Engineering Department
Spartanburg, S. C.

Dear Russell:

Yesterday Mr. Milliken gave his approval for our putting in the sprinkler system for the first two floors of our plant. As you are working on this project we decided we would get several bids before making our ??????? the job.

Mr. Milliken wanted us to have our water tested to see if there was anything that would cause the pipes to rust more than usual or collect sediment that would stop up the pipes. We would like to have your advice on what to do about this matter, and we will go forward at once to make whatever tests you think are necessary to find out whether our water is more corrosive than other types of water.

Very truly yours,

J. M. Oeland,
Treasurer

jmo-m
cc: Mr. Hal C. Byrd
Mr. F. P. Mullendore
Mr. W. S. Hawkins

General Counsel Exhibit L-1

DEERING MILLIKEN RESEARCH TRUST

PROJECT ASSIGNMENT

Date December 8, 1954

Project No. 952

Assigned To: Mr. R. J. Tohor

Title: Incoming Parts Inspection—Darlington

Statement:

In accordance with the general program now accelerating in the Deering, Milliken mills, to inspect all purchased parts for quality of materials, accuracy of machining, and general acceptability, this project is being opened to cover the work at Darlington. The first survey will be made of weave room parts, since this appears to be a major source of parts expenditures.

General Counsel Exhibit L-3

DEERING MILLIKEN RESEARCH CORPORATION

DATE: January 24, 1956

To: Mr. George Asnip
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. J. A. Meehan
Mr. Roger Milliken
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

cc: Mr. D. R. Arrowood
Mr. C. E. Anderson
Mr. J. M. Bailey
Mr. D. I. Beal
Mr. Harold Brissey
Mr. Phillips Byfield
Mr. F. E. Byrd
Mr. S. J. Craig, Jr.
Mr. Harry Defore
Mr. L. C. Ellis
Mr. W. E. Faulkenberry
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. W. A. Goodwin
Mr. F. J. Haddon
Mr. E. J. Hamner
Mr. W. A. Hunt
Mr. J. M. Jackson
Mr. T. C. Jolly
Mr. R. H. Jones
Mr. R. A. Littlejohn
Mr. W. D. McBee
Mr. R. W. McCullough
Mr. W. S. Manning
Mr. A. G. New
Mr. W. A. Newton
Mr. T. E. Peden
Mr. H. L. Pratt, Jr.
Mr. George Rankin
Mr. H. B. Risher
Mr. F. E. Rowe
Mr. G. G. Simmons
Mr. A. W. Stoudemire
Mr. F. A. Thompson
Mr. W. E. Thrailkill
Mr. A. C. Weisner
Mr. Martin Wallace
Mr. B. V. White.

FROM: R. B. Newton

SUBJECT: Proper Installation, Inspection and Protection of New Machinery

The best insurance of the efficient use of new machinery is a good preventive maintenance system on old machinery. If the old has been neglected, it usually follows that the new equipment will also be neglected—sometimes even more, because better results might be expected without proper attention.

The critical maintenance period for new machinery is in the first few months of operation. Machinery inspectors should be assigned to make frequent checks on all new machinery, beginning with the erection stage. Perhaps a weekly inspection would be a good guide at first.

Particular attention should be addressed to: (1) gears, studs, bearings, etc., running excessively hot or showing any wear. (2) adequate lubrica-

General Counsel Exhibit L-3

tion by hand and, where automatic oiling sometimes is specified, checks should be made to be sure that each oiling point is actually getting the proper amount of oil, and (3) spindles should be systematically oiled and the lubricant should be checked for breaking down or discoloring excessively.

* * *

After equipment has been in place and checked for satisfactory operation, the inspection cycle time should be lengthened to normal.

The close inspection as outlined above is the responsibility of the mill management and the local machinery inspectors. Where special problems are encountered, there will be a need for DMRC special service which can be called at the discretion of management.

* * *

Serious consideration also should be given wherever possible to standardization of machinery and parts in one mill. The tangible and intangible values which come from this policy are great—lower supply inventory, less time for training maintenance men and fixers, simplification of operator duties, more time for supervisors to address their efforts to productive work, etc.

RBN

RBN/j

General Counsel Exhibit L-4

DEERING MILLIKEN RESEARCH CORPORATION

DATE: February 25, 1955

TO: Abbeville, R. C. Edwards
Cowan, A. Weisner
Darlington, J. M. Oeland
Drayton, G. G. Simmons
Ex.-Clemson, E. O. DeFore
Ex.-Rutherfordton, R. H. Jones
Ex.-Union, M. W. Beacham
Farnsworth, J. A. Meehan
Gaffney, J. J. Norton
Gayley, W. S. Manning
Ger. Mil., L. J. Fisher
Hartsville, I. S. Pitts
Hatch, Jack Craig
Johnston, T. E. Peden
Judson, J. M. Bailey
Kingsley, W. E. Thrailkill
Laurens, George Asnip
Lockwood, Randolph Brandt
McCormick, Fred Thompson
Monarch, L. C. Ellis
Lockhart, J. A. Ferguson
Pacolet 3 & 5, C. T. Holland
Pacolet 4, George Baker
Pacolet 6, Winston Garth
Ottaray, H. L. Pratt

FROM: DMRC—R. W. McCullough

SUBJECT: Maintenance Memo #9—Portable Work Bench for Maintenance Men

At the recent meeting where we discussed the maintenance man concept, we emphasized our belief that it is a very necessary first step to supply a portable work bench equipped with some power and hand tools.

The attached drawing illustrates generally a suitable work bench. The Purchasing Department (Mr. R. F. Sanders) has located one supplier who will make up this bench to this drawing for about $210.00. McCormick has located a builder who claims to be able to supply it for about $110.00 (less casters), but we have not seen a sample of his work.

The memo copy attached is a specification for the minimum tools which we feel the mill ought to supply with the bench. The maintenance man should be held accountable personally for the care of the tools. Monarch has so equipped one bench and it has worked out very well. We have refereniced Sears, Roebuck catalog number only to illustrate the size

General Counsel Exhibit L-4

and quality of tool specified and do not hold any brief for their products in particular. If purchases can be pooled through Mr. Byrd's office it is likely that a substantial discount can be obtained on most items.

R. W. McCULLOUGH

Attachments
RWMcC/bk

cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud
Mr. E. H. Hines
Mr. Roger Milliken
Mr. H. C. Byrd

General Counsel Exhibit L-5

June 2, 1955

Mr. R. B. Newton

R. W. McCullough

Status Report of Maintenance Bench and Shop Inspection Phases of Annual Machinery Inspection Program

Maintenance Trucks

Abbeville—4 trucks in use—1 overhauler, 1 card room, 1 spinning room, 1 winding and twisting. Progress is good.

Darlington—1 truck in use in card room only. Progress is fair and would be improved if a 2nd maintenance man and truck were put in spinning room immediately.

Drayton—Progress is good—3 boxes in use, 2 in carding and 1 in spinning. Interest level is high.

Gaffney—No action here—we have not urged this mill since we have felt that some of the other mills needed our services more.

Hartsville—1 truck in use in spinning room only. Progress is fair and would be improved if a 2nd maintenance man and truck were put in card room.

Judson—1 box purchased several weeks ago, but not yet equipped or in use. The cotton unit will not need more than one maintenance man.

Laurens—2 boxes in use—progress is good both in carding and spinning.

General Counsel Exhibit L-5

Lockhart—2 boxes purchased—1 is completely equipped. Neither are in use for maintenance purposes (were being used by machinery movers and overhaulers?). Progress is below average because of delay in selection of maintenance men and assignment to regular cycles.

Lockwood—No action here—no emphasis on our part.

McCormick—3 boxes complete and in operation (1 spinning, roving and twisting, 1 in pin drafters, 1 in top mill). Progress is good.

Monarch—2 new type, 1 old type box in use. Progress has been good to fair. Weaknesses are poor records, pulling maintenance men off their cycles to do other work and delay in getting spinning maintenance men started.

Ottaray—No action here—small size of mill makes combination man (opening through spinning) necessary. We have not "urged" this mill.

Pacolet 3 & 5—1 box in use, 1 more on order for Pacolet #5. Progress has been below average of all mills due to delay in ordering equipment, selection and assignment of maintenance men to their cycles. Probably 4 benches will be needed to equip these two mills.

Pacolet 4 (New Holland)—5 benches equipped and in operation (2 in spinning, 3 in card room). Progress and attitude very good.

Pacolet 6 (Gainesville)—2 benches have been ordered, but none in use yet. Progress has been below average due to delay in getting started.

General Counsel Exhibit L-5

The following are major points to the proper use of maintenance men:

1. Do not interfere with cycle by temporarily pulling maintenance man off his job for other rush work.
2. Do not make any sizeable reduction in regular complement of section men or fixers until maintenance men have cycled the machinery at least twice, and it appears likely that the next cycle time will be about 8 weeks.
3. Insist on maintenance men keeping simple, but accurate records by machine number, as to what they repaired or replaced on each machine cycle.
4. Set up controls whereby parts removed from machinery are inspected by supervisory personnel to determine if parts should be scrapped or reworked in shop.
5. Watch records of maintenance carefully to detect "repeats"—certain parts or adjustments which are giving trouble constantly (these often need an engineering remedy).
6. Periodically have machinery inspector check several frames behind the maintenance men to check on quality and thoroughness of his work.
7. Have periodic check (monthly) of maintenance bench and audit of tools to hold good level of housekeeping by maintenance man, and to check on adequacy of tools being used.

Machine Shop Inspection

We have made some progress in helping the mills upgrade their shops, but are planning to put more emphasis on this

in the near future. This is very important since our maintenance program depends on shops being well equipped and well run. (One of the major hold ups to the increased use of replaceable Oilite type bearings is that the shops are not equipped or trained to do the necessary precision boring of the machine parts to accommodate the bearings).

An adequate inspection of each shop should be made, and a written report to each mill management submitted to cover the following:

1. Conditions of existing major equipment and recommendation for bringing it up to standard good operating condition.
2. Inspection of small tools, fixtures and accessories (reamers, cutters, taps, discs, mandrels, drills, grinders, vises, etc.) to determine their condition and recommendation as to what is needed to bring their condition up to standard and what additional small tools are needed.
3. Recommendation as to any major items of equipment that should be purchased or reworked. (Here we have had good success in getting the mills to buy and use metallizing equipment).
4. Inspection of jigs and fixtures (used to rework production machine parts by shop) to determine their proper design and use.
5. Inspection of general housekeeping in shop, to include storage of small tools, raw stock, acetylene and oxygen tanks, metallizing wire, cutting torches, welding rod, etc. This should include lighting in the shop area.

General Counsel Exhibit L-5

To put the machine shop inspections on a numerical basis it would be possible to give each of the above five major classifications a merit value of 20 points each. Thus a shop which was up to standard in all five would get a 100% rating. Where specific items or steps were recommended to correct a certain lack of tools or other deficiences the rating would be something less than 20 for that particular classification.

This first survey could be completed in about two months if an average of three mill shops were covered per week. A follow-up cycle could be then made and this would take about three weeks.

RWMcC/bk

General Counsel Exhibit L-6

DEERING MILLIKEN RESEARCH CORPORATION

DATE: October 12, 1955

TO: To All Mills

FROM: DMRC

SUBJECT: Machinery Maintenance Goals—October 1955 to March 1956

The following are the Machinery Maintenances goal recommendations made at the October 11 meeting at Drayton Mill. These recommendations are general to all mills—cotton, filament, worsted and woolen.

The Machinery Maintenance group of your Research Corporation will continue to emphasize and assist in setting up better maintenance practices at a higher priority than inspection demeriting activities for the next three to six months. Very likely our mill group inspections will be confined chiefly to warp preparation, looms, opening and picking equipment and possibly spinning.

SIX MONTHS GOAL FOR MILLS

1. Have *maintenance men on a routine 8 to 10 week cycle of all preparation equipment* up to weaving and include cloth room machinery.

A. Where DMRC has not worked out details of forms, etc., for warpers, cloth frames, quillers, etc., use same principle as has been demonstrated on other machinery to accomplish this job. Devise own forms and proceed.

B. (Do not let maintenance men be pulled off for machinery moving, rush short-term jobs, etc.)

General Counsel Exhibit L-6

2. Make a serious attempt to *use maintenance man concept in weave room.* (Two mills have already begun this work.) Use standard inspection forms for maintenance or simplify the forms, leaving out "left" and "right," etc.

3. *Extend demeriting inspection techniques to machinery not now covered* by DMRC, using principles already established. Mills to apply principles already established, devise own forms and, if desired, demeriting values. Several mills have taken initiative in this respect, for example:

McCormick — Pindrafters and twisters
Monarch — Cloth frames
Drayton — Downtwisters, ring twisters and quillers

4. *Stock room inventories*—Set up maximum and minimum inventory levels for preparation equipment parts with automatic reorder provision. Many stock rooms already set up for weave room parts in this way.

5. Have training supervisor set up *training classes* for preparation machinery fixers. Have maintenance man or technical superintendent instruct in *gear setting* particularly.

(Maintenance man's work is being nullified by poor fixer's practices, especially in gear setting.)

General Motors films on "Care and Use of Hand Tools" is very good.

Can be obtained from: Plomb Tool Company
P. O. Box 3519 Terminal Annex
Los Angeles, California

R. W. McCullough

General Counsel Exhibit L-7

DEERING MILLIKEN RESEARCH CORPORATION

DATE: April 7, 1956

TO:
Abbeville—R. C. Edwards
Darlington—J. M. Oeland
Drayton—G. G. Simmons
Gaffney—J. J. Norton
Hartsville—I. S. Pitts
Judson—A. G. New
Laurens—M. G. Wallace
Lockhart—J. A. Ferguson
McCormick—F. Thompson
Monarch—L. C. Ellis
Ottaray—H. L. Pratt
Pacolet 3 & 5—C. T. Holland
Pacolet 4—J. M. Jackson
Pacolet 6—W. F. Garth

FROM: DMRC—R. W. McCullough

SUBJECT:

Within the next week to ten days our Machinery Maintenance Section will visit each of the mills to evaluate again their status and progress in the use of maintenance men.

On this round we will rate the maintenance man program on a point basis which will be explained in detail during the visit.
Basically, the rating will be given on a few major points:

1. Is maintenance bench equipment in proper condition and use.
2. Are demeriting inspections being made by the mill (by second hand, mill inspectors or some other responsible person).
3. Are maintenance men in regular and constant use.
4. To what extent is the machinery under the attention of a maintenance man and how many rounds have been completed in each department so covered.

The machine records (maintenance and inspection) filled out by the mill over the past several months will be used as a primary basis for these ratings.

Our men will be on a relatively "tight" schedule to get up-to-date information for the April 23 treasurers' meeting, and we will appre-

ciate your assistance in helping them to get an accurate finding with as little delay as possible.

After you have had an opportunity to go over this system of rating the maintenance program, we will welcome your suggestions as to how it can be improved in the future.

R. W. McCULLOUGH

RWMcC/bk

cc: Mr. Roger Milliken
Mr. W. A. L. Sibley
Mr. A. B. Sibley
Mr. George Asnip
Mr. J. A. Meehan
Mr. R. B. Newton

General Counsel Exhibit L-7

SCHEDULE

Laurens) Judson)	Monday	April 9
Pacolet #4) Pacolet #6)	Tuesday	April 10
McCormick) Abbeville)	Wednesday	April 11
Darlington) Hartsville)	Thursday	April 12
Monarch) Lockhart) Ottaray)	Friday	April 13
Gaffney) Drayton)	Monday	April 16
Pacolet #3 & 5)	Wednesday	April 18

General Counsel Exhibit L-8

DEERING MILLIKEN RESEARCH CORPORATION

DATE: April 21, 1956

TO: All Mills

FROM: R. B. Newton

SUBJECT: Specialized Training of Maintenance Men—Inter-mill Visits

At the last treasurers' meeting at Drayton the Research Corporation recommended that the training and efficiency of the assigned maintenance men in all the mills could be improved by having inter-mill visits with selected maintenance men who are doing the better jobs in certain of the mills.

The Research Corporation has *selected* the maintenance men at *Drayton on opening, picking and carding;* at *Laurens on drawing and roving* and at *Abbeville on spinning* as being good examples of well-trained, highly interested, adequately equipped and properly supervised maintenance men.

It is *recommended* that the *maintenance men from all mills visit these selected mills according to the schedule attached* to this memo. You will note that the visits are scheduled for two days each and that only two mills will be visiting a host mill at any one time. This arrangement has been cleared and approved by the host mills Drayton, Laurens and Abbeville, and is now being sent to each mill as an invitation to participate in this program. *If you are not able to follow the schedule suggested, please contact Mr. Raymond Owings at Drayton, Mr. Roy Rochester at Abbeville*

and *Mr. Les Pugh at Laurens* so that they will be able to plan their respective parts in this training program with you.

It is intended that in the two day session the maintenance men at the host mill will review, by discussion and actual demonstration on machines, his techniques and procedures for adequate maintenance. The overseer at the host mill will also talk with the group outlining the objectives in that particular mill and reviewing their progress and management follow-up on the activities of the maintenance men.

While some mills have not actually assigned men in all preparation departments, we have included them in the schedule in the hope that they will either have these men assigned or send the mostly likely candidate to the training session.

It will be important that the maintenance men who are attending these sessions appreciate the full purpose of the training. They shouldl be told the reason for being sent and should be asked to bring back to their home mills several recommendations as to how their work could be improved. They should also be prepared to offer to the other participating members in the two day sessions the benefit of their experience in overcoming specific maintenance problems on their job.

Members of the DMRC machinery group will be on hand at the beginning of each of the sessions at the three host mills to assist in the program, and will work with each of the mills in organizing schedules for the two day sessions. The following is an outline by mills showing the present assignments of the maintenance men and the number of the men in each mill. Where the assignment is shown in

parentheses it indicates that it is a DMRC proposed assignment.

ABBEVILLE

1 Man — Opening, Picking, Carding, Drawing, Roving
1 Man — Spinning

DARLINGTON

1 Man — Opening, Picking, Carding, Drawing, Roving
1 Man — Spinning

DRAYTON

1 Man — Opening, Picking, Carding
1 Man — Drawing, Roving
2 Men — Spinning

GAFFNEY

1 Man — Opening, Picking, Carding
1 Man — Drawing, Roving
2 Men — Spinning

HARTSVILLE

1 Man — Opening, Picking, Carding, Drawing, Roving
1 Man — Spinning

JUDSON

1 Man — Opening, Picking, Carding, Drawing, Roving. Spinning

LAURENS

1 Man — Opening, Picking, Carding
1 Man — Drawing, Roving
1 Man — Spinning

General Counsel Exhibit L-8

LOCKHART

1 Man — Opening, Picking, Carding
1 Man — Drawing, Roving
2 Men — Spinning

MONARCH

1 Man — Opening, Picking
1 Man — Cards
1 Man — Drawing, Roving
2 Men — Spinning

MCCORMICK

1 Man — Roving, Spinning

OTTARAY

(1 Man — Opening, Picking, Carding, Drawing, Roving, Spinning)

PACOLET 3 & 5

1 Man — Opening, Picking
1 Man — Cards
1 Man — Drawing, Roving
2 Men — Spinning

PACOLET 4

1 Man — Opening, Picking
1 Man — Cards
1 Man — Drawing, Roving
2 Men — Spinning

PACOLET 6

(1 Man — Opening, Picking, Roving)
(1 Man — Carding, Drawing)
2 Men — Spinning

RBN/bk

General Counsel Exhibit L-8

MAINTENANCE MEN - SCHEDULE OF VISITS

	1st Week		2nd Week		3rd Week		4th Week	
	Mon.-Tues. Apr.30-May 1	Thurs.-Fri. May 3-4	Mon.-Tues. May 7-8	Thurs.-Fri. May 10-11	Mon.-Tues. May 14-15	Thurs.-Fri. May 17-18	Mon.-Tues. May 21-22	Thurs.-Fri. May 24-25
Monaco								
Opening Pickers Cards	Laurens Gaffney	Ottaray Judson	Darlington Hartsville	Lockhart Abbeville				
Opening Pickers (only)					Monaco Pacolet 3&5 (Monday only)	Pacolet #4 Pacolet #6 (Thursday only)		
Cards Only							Monaco Pacolet 3&5	Pacolet #4 Pacolet #6
Laurens								
Drawing & Roving		Drayton Abbeville	Monaco Pacolet 3&5	Pacolet #4 Pacolet #6	Judson McCormick Ottaray	Lockhart Gaffney	Darlington Hartsville	
Abbeville								
Spinning			Laurens Monaco	Pacolet #4 Pacolet #6	Darlington Hartsville	Gaffney Pacolet 3&5	Drayton Lockhart	Judson McCormick Ottaray

General Counsel Exhibit L-9

DEERING MILLIKEN RESEARCH CORPORATION

Date: April 25, 1956

To: Abbeville, R. C. Edwards
Darlington, J. M. Oeland
Drayton, G. G. Simmons
Gaffney, J. J. Norton
Hartsville, I. S. Pitts
Judson, J. M. Bailey
Laurens, M. G. Wallace
Lockhart, J. A. Ferguson
McCormick, F. A. Thompson
Monarch, L. C. Ellis
Ottaray, H. L. Pratt
Pacolet #3 & #5, C. T. Holland
Pacolet #4, J. M. Jackson
Pacolet #6, W. F. Garth

From: R. W. McCullough

Subject: Maintenance Man Training Program

There has been a point raised which needs clarification regarding the maintenance man, training sessions. The visiting maintenance men should arrive at the "host" mill prepared not only to observe the complete range of practices, methods and record keeping techniques in use at the "host" mills, but also to participate in actual machinery maintenance. The maintenance men should bring their work clothes with them and as many small tools as it is convenient for them to bring. We do not suggest that they bring their tool boxes, but such "much used" tools as box end and open end wrenches, pliers, screw drivers, etc.

I have been in touch with Raymond Owings at Drayton, Les Pugh at Laurens, and Albert Stoudenmire at Abbeville, and we have agreed on a general outline of the procedure for handling these men at the time of their visit to the "host" mill.

On the first day of each session, a short discussion period will be held in which the "host" mill will outline to the visiting men the background and current status of the maintenance man program at that mill. This will be done by the

General Counsel Exhibit L-9

technical superintendent or some other equally responsible and informed person. Emphasis will be placed on the value that management feels it is getting from this program and the concept of the program on a company wide basis will be made to stress the importance of the maintenance man's job to the visitors. The opening conference will cover the cycle time, the number of rounds that have been completed, the increase in machine performance which can be attributed to improved maintenance, the record keeping system, any evidence that is available as to reduction in parts costs, etc., etc.

The visiting maintenance men will also be asked to give a short description of the program at his home mill.

It is hoped that there will be a free exchange of ideas and information between the maintenance men and that this exchange will result in advantages to all of those participating in the program. Before each pair of visiting maintenance men leave the mill, there will be a review session held in which the visitors will be asked to discuss their visit, to bring out the helpful things which they have learned and to suggest any improvements which might be transferred from their mill to the "host" mill.

From the discussions which I have had with the three "host" mills and several of the other participating mills, I am sure that this program will be extremely helpful to all those concerned and that it is going to get full support from everyone.

R. W. McCULLOUGH

RWMcC/bk

cc: Mr. Roger Milliken
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. R. B. Newton

General Counsel Exhibit L-10

DEERING MILLIKEN RESEARCH CORPORATION

DATE: March 6, 1956

TO: All Mills

FROM: R. W. McCullough

SUBJECT: PM System Installation—Mill Progress Rating Given at Drayton Meeting February 6, 1956

Within a few minutes after I completed my short talk at the Drayton meeting on February 6, it was made quite evident that a clarification of the reasons for the mill ratings was necessary.

The chart which was made up for that meeting is presented below:

Rate of Progress Dec. 1954—Dec. 1956	Carding	Spinning
I	Drayton	Abbeville
	Laurens	Drayton
		Laurens
I	Abbeville	Gainesville
	Judson	Judson
	McCormick	Lockhart
	Monarch	McCormick
	New Holland	Monarch
	Hartsville	New Holland
		Hartsville
III	Darlington	Darlington
	Gaffney	Gaffney
	Gainesville	Ottaray
	Lockhart	Pacolet 3
	Ottaray	Pacolet 5
	Pacolet 3	
	Pacolet 5	

General Counsel Exhibit L-10

This chart does not reflect the condition of the machinery in the carding and spinning departments of the mills indicated.

It is not directly related to demerits per machine or machinery condition.

It is designed to show in chart form, the consenus of the opinion of the Research Corporation machinery maintenance group as to the relative progress that the mills have made in achieving standardized, controlled machinery maintenance systems.

We have outlined on numerous occasions our recommendations for an efficient preventive maintenance system in carding and spinning. They include (1) periodic scheduled, demeriting inspections either by mill inspector or second hand, (2) constant review by management of the demeriting inspection results, (3) maintenance of machinery demerits at or below acceptable goal levels, (4) the scheduled, uninterrupted cycling use of well trained, properly equipped and supervised maintenance men on all production machinery, (5) constant second hand and overseer follow-up on activities of maintenance men, (6) maintenance man cycling steadily at eight to ten weeks frequency, keeping accurate records of machinery conditions, adjustment, repairs and parts replacements.

Standard mill to mill systems in costing, accounting, waste control, time study, production control, etc., have been accepted as efficient ways to operate modern businesses. The concept of standard maintenance practices is relatively newer, especially in the textile industry, but the arguments for it are as sound as those for standardizing any other management control techniques.

General Counsel Exhibit L-10

Now getting back to the chart, there is no importance to be attached to the relative ranking within each group—(the mills are arranged alphabetically within the groups I, II, and III). Some mills with a group II rating are, in our opinion, very close to group I. Likewise, some of the group III are very close to a group II rating. Again, keep in mind that this rating does not refer to the condition of the machinery, but to the progress which the mills have made toward installing a standard SPM (Scheduled Preventive Maintenance) system.

The following is a list of our comments by mills indicating some of the more important steps which DMFC would like to see taken toward the end that we would approach a standard preventive maintenance system in cotton type carding and spinning from mill to mill.

* * *

DRAYTON

Card Room

Generally very satisfactory.

Spinning Room

Generally very satisfactory.

GAFFNEY

Card & Spinning Room

No maintenance men assigned, no maintenance boxes in use, no cycles completed. Four maintenance boxes have been purchased and plans are under way to install system soon.

General Counsel Exhibit L-10

HARTSVILLE

Card Room

1. Maintenance box and tools not assigned to maintenance man alone—overhaulers, fixers, etc.
2. Cycle time and cycle frequency too low and/or varies.
3. Inadequate records kept.
4. Supervisory follow-up and interest needs strengthening.
5. Machinery not covered by any mill demeriting inspection.

Spinning Room

1. Maintenance box and tools not assigned to maintenance man alone—overhaulers, fixers, etc.
2. Cycle time and cycle frequency too low and/or varies.
3. Machinery not covered by any mill demeriting inspection.

* * *

General Counsel Exhibit L-12

DEERING MILLIKEN RESEARCH CORPORATION

DATE: June 4, 1956

TO: Abbeville, R. C. Edwards
Darlington, J. M. Oeland
Drayton, G. G. Simmons
Gaffney, J. J. Norton
Hartsville, I. S. Pitts
Judson, J. M. Bailey
Laurens, M. G. Wallace
Lockhart, J. A. Ferguson
McCormick, F. A. Thompson
Monarch, L. C. Ellis
Ottaray, H. L. Pratt
Pacolet 3 & 5, C. T. Holland
Pacelot 4, J. M. Jackson
Pacolet 6, W. F. Garth

FROM: R. W. McCullough

SUBJECT: Revised Spinning Maintenance Inspection Forms

Attached to this memo please find one pad each of Spinning Maintenance Inspection forms Nos. 11 and 12 (revised 5/15/56). These replace forms Nos. 11, 12, and 12A which were previously used (12/1/54). Please pass these new forms on to those persons in your mill who are doing your machinery inspection work.

* * *

Provision has been made to include pneumafil tubes on this inspection form.

Before revising this form we surveyed several of the mills and obtained their recommendations as to changes they would like to see in the outline of the forms. We were able to incorporate most of the recommendations made by the mills.

Additional pads of these forms can be obtained from the Research Corporation. Please discontinue the use of the older forms and substitute these instead.

General Counsel Exhibit L-12

We are planning to revise the drawing, roving, picking and opening forms along these lines also. We will welcome any suggestions the mills have as to: inspection points which should be added or deleted, demerit ratings which should be decreased or increased, rearrangement of the format, etc. Perhaps the best way to present your ideas would be to use the present forms and red pencil on them the changes you would like to see.

R. W. McCullough

RWMcC/bk

cc: Mr. Roger Milliken
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. George Asnip
Mr. J. A. Meehan
Mr. R. B. Newton

General Counsel Exhibit L-13

DEERING MILLIKEN RESEARCH CORPORATION

DATE: June 7, 1956

TO: Mr. R. B. Newton

FROM: R. W. McCullough

SUBJECT: Third Round of Spinning Frame Maintenance Inspections

The following is a proposed schedule for the third round of spinning frame inspections:

* * *

It has been over eighteen months since we made our last round of spinning frame maintenance inspections. In that period most of the mills placed into operation the use of maintenance men and all of the mills upgraded the level of mechanical excellence of their spinning equipment. We are quite confident that this round of inspections will show that most, if not all, of the spinning frames in the Deering, Milliken organization are being maintained at very satisfactory levels of maintenance.

RWMcC/bk

cc: Abbeville
Darlington
Drayton
Excelsior #1
Excelsior #3
Gaffney
Hartsville
Hatch
Laurens
Lockhart
McCormick
Monarch
Ottaray
Pacolet #3 & 5
Pacolet #4
Pacolet #6
Mr. Roger Milliken
Mr. A. B. Sibley
Mr. M. C. Stone
Mr. K. M. Lowry
Mr. Harry Defore

General Counsel Exhibit L-14

File 822

DEERING MILLIKEN RESEARCH CORPORATION

DATE: August 15, 1956

TO: All Mills

FROM: DMRC—R. W. McCullough

SUBJECT: Results of Third Demeriting Inspection on Spinning Frames

The following table gives the results of our recently completed third round of demeriting inspections:

Mill Name	Second Inspection Demerits/Spindle	Third Inspection Demerits/Spindle	
Judson	—	.54 (1)	
Ottaray	2.5	.76 (1)	
Drayton	3.0	.77 (2)	
Lockhart	5.0	.96 (3)	
Abbeville	4.0	1.18	
Monarch	3.2	1.32 (4)	
Pacolet #5	3.7	1.36	
Pacolet #6	3.0	1.40	Goal 1.5
Laurens	4.4	1.87	
Darlington	2.3	1.97	
Pacolet #3	8.2	2.15	
Gaffney	2.4	2.20 (5)	
Pacolet #4	3.0	2.58 (6)	
Hartsville	4.0	2.64	
Excelsior #1	43.8	2.80	
Excelsior #3	9.7	3.10	
McCormick	7.5	3.40	
Hatch	32.5	3.70	

(1) Judson and Ottaray have all new Whitin frames.
(2) Drayton has no new spinning equipment.
(3) Lockhart has 80 new Rieter frames with .63 demerits/spindle.
(4) Monarch has 120 new Rieter frames with 1.05 demerits/spindle.
(5) Gaffney has 30 new Whitin frames with .44 demerits/spindle.
(6) Pacolet #4 has 36 new Whitin frames with 1.36 demerits/spindle.

General Counsel Exhibit L-14

For comparison purposes we included the results of the second inspection made 12 to 16 months ago. It is apparent from these results that all mills are continuing to make improvements in their demerit ratings. Eight of the mills are below the goal of 1.5 demerits per spindle and the other 10 are all close to it.

In some mills we noticed a tendency to "ease up" on the policy of not taking maintenance men off their jobs. We suggest that the managers and superintendents review this with the card room and spinning room overseers to insure that the maintenance man are on their assigned jobs continuously and that their cycle time is either at an 8 to 10 week period or rapidly approaching that condition.

Robert W. McCullough

RWMcC/bk

cc: Mr. George Asnip
Mr. J. Meehan
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. R. B. Newton
Mr. Roger Milliken
Service Departments

General Counsel Exhibit L-15

DEERING MILLIKEN RESEARCH CORPORATION

DATE: June 14, 1956

TO: Mr. R. B. Newton

FROM: R. W. McCullough

SUBJECT: Third Maintenance Inspection of Looms

The following is our schedule for the third complete round of mechanical maintenance inspection on looms in the Deering, Milliken mills:

* * *

General Counsel Exhibit L-16

File 822

DEERING MILLIKEN RESEARCH CORPORATION

DATE: August 21, 1956
TO: All Mills
FROM: DMRC—R. W. McCullough
SUBJECT: Loom Demeriting Inspection Results

The following tables show the results of the 1956 round of demeriting inspections on looms in the Deering, Milliken mills. The data are grouped by loom types. For reference and comparison the results of the first two inspections (1954 and 1955) are also given.

C & K "W" Type Looms	1st Inspection 1954	2d Inspection 1955	3rd Inspection 1956
Johnston (W-3)	222	85	30
Excelsior #2 (W-3)	64	27	31
Hatch (W-3)	252	67	44
Excelsior #1 (W-3)	525	108	53 Goal 70
Abbeville	245	106	82
Excelsior #3 (W-3)	470	174	147
Kingstree (W-2)	—	—	274
Kingstree (W-3 AC)	—	—	157
C & K "C" Type Looms			
Abbeville (C-5)	*243	28	3
Judson (C-6)	18	44	18
Judson (C-2)	66	27	19
Abbeville (C-4)	*243	66	23
Drayton (C-5 & C-6)	90	57	47 Goal 50

*During the first inspection at Abbeville the C-4 and C-5 looms were grouped together. Therefore, the average demerits per loom of 243 is shown for both these types of looms.

C & K "S" Type Looms			
Judson (S-6)	38	11	19
Judson (S-5)	62	27	20 Goal 50
Gerrish Milliken	159	72	68

General Counsel Exhibit L-16

Draper "X" Type Looms (without dobby)

	1st Inspection 1954	2d Inspection 1955	3rd Inspection 1956
Pacolet #3	24	36	6
Pacolet #4	58	22	18
Gaffney	68	11	22
Monarch	90	79	23
Pacolet #5	66	37	26
Ottaray	70	103	27
Pacolet #6	81	177	29
Darlington	144	58	37
Hartsville	96	73	38
Lockhart	—	—	43 Goal 50

The above comparison is for all "X" type looms without dobby motions. Where X-2 looms and X-model looms were inspected at a mill, the demerits shown are a weighted average for all the "X" type looms.

Draper X-D and X-K (with dobby)

Judson (X-D 50")	39	26	7
Judson (X-D 54")	19	41	17
Laurens (X-D 50")	71	31	17
Ottaray (X-D)	23	50	23
Drayton (X-D)	*84	*39	*33
Gerrish Milliken (X-D & X-K)	*89	*60	*35
Kingsley (X-K)	80	22	40 Goal 40
Kingsley (X-D)	144	31	43

*Weighted Average

Draper E-Model Looms

Gaffney	131	40	18
Monarch	116	121	22
Pacolet #3	186	91	22
Darlington	157	92	22
Pacolet #6	554	83	28
Pacolet #5	191	117	35
Pacolet #4	228	94	40
Lockhart	361	161	46 Goal 60

RWMcC/bk

CC: Mr. George Asnip
Mr. J. Meehan
Mr. A. B. Sibley
Mr. W. A. L. Sibley

R. W. McCULLOUGH

General Counsel Exhibit L-17

DEERING MILLIKEN RESEARCH CORPORATION

DATE October 5, 1956
TO: All Mills
FROM: DMRC—R. W. McCullough

The following table shows the results of the recently completed 6th warp preparation inspection. For background the results of the last three are also included. The attached table gives a breakdown of the demerit sources:

Cotton Goal-10/Loom	3rd Check Aug. '55	4th Check Oct. '55	5th Check Feb.-Mar. '56	6th Check Sept.-Oct. '56	
Hartsville	13.3—5	8.7—2	8.3—1	7.4—1	
Lockhart	10.9—3	9.8—4	11.1—6	7.6—2	Goal
Monarch	11.9—4	13.1—7	16.8—10	10.8—3	
Pacolet #6	10.4—2	9.2—3	10.5—3	12.6—4	
Ottaray	6.8—1	4.6—1	10.4—4	12.9—5	
[illegible]let #5	17.7—7	10.8—6	14.6—7	14.4—6	
[illegible]n	16.8—6	18.6—10	19.3—12	14.5—7	
[illegible]s	19.7—9	19.6—11	17.7—11	15.1—8	
Darlington	27.4—12	19.8—12	15.9—9	18.3—9	
Gaffney	20.2—10	13.9—8	9.4—3	20.6—10	
Judson	49.0—13	16.2—9	9.2—2	23.2—11	
Pacolet #3	18.4—8	10.1—5	14.8—8	24.2—12	
Pacolet #4	25.6—11	24.6—13	31.1—13	34.3—13	
Filament Goal-5/Loom					
Kingsley	3.5—2	3.5—2	3.1—4	3.9—1	
Judson	6.0—5	4.1—3	1.8—1	4.7—2	Goal
Laurens	5.5—4	6.3—4	2.9—3	6.3—3	
Gerrish Milliken	11.9—6	17.1—6	8.8—5	9.6—4	
Excelsior #2	0—1	14.0—5	9.5—6	16.5—5	
Drayton	3.8—3	3.4—1	2.0—2	—	
Woolen-Worsted Spun Synthetic Goal-10/Loom					
Excelsior #1	11.5—3	6.2—1	2.5—1	1.0—1	Goal
Kingstree	—	—	—	13.4—2	
Excelsior #2	6.2—1	9.4—3	10.3—3	13.5—3	
Johnston	18.2—4	29.2—5	18.5—4	17.9—4	
Excelsior #3	11.0—2	8.6—2	9.9—2	19.1—5	
Hatch	28.4—5	47.4—6	36.8—6	22.0—6	
Abbeville	36.8—6	19.5—4	25.2—5	25.2—7	

General Counsel Exhibit L-17

October 3, 1956

General Observations

A review of the results of this 6th round in comparison to those of the 5th round (which was made approximately seven months ago) shows distinct adverse trends in the cotton mills and in the filament mills with the woolen-worsted group barely holding its own.

In the cotton mill group six of the mills improved their ratings, seven of the mills lost ground, two of these seven lost a considerable amount of ground. The organizational wide average for all DM cotton mills at the fifth check was 14.5. For the sixth check it was 16.6 demerits per loom.

In the filament mill group all the mills showed an increase in demerits per loom, the over-all average increasing from 4.7 to 6.8 demerits per loom.

In the woolen-worsted group, Excelsior, Union, stands out "head and shoulders" above all of the rest of the mills in excellence of warp preparation. Three of the mills improved their ratings and three showed a backward trend. Kingstree Mill, which was checked for the first time in this round, moved in at second place in the group of seven mills.

We would like to recommend again that this type of audit be made by the mills at regular intervals—preferably weekly. It will take less than two hours of one supervisor's time per week to make a random check on fifty looms and this will give sufficiently adequate information to detect trends if the check is made regularly.

R. W. McCULLOUGH

RWMcC/bk

cc: Mr. Roger Milliken
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. George Asnip
Mr. Harry Defore
Mr. K. M. Lowry
Mr. Sterling Smith

General Counsel Exhibit L-20

April 30, 1956

Dr. N. C. Armitage
Deering Milliken Research Corporation
Box 27
Pendleton, S. C.

Dear Mr. Armitage:

Some time ago you may remember that we shipped for trial installation the slubbing device to one of the Burlington mills. It is my understanding that they did not wish to purchase and you requested the return of this device to Research to be checked over.

We have a letter from Mr. A. G. New at Judson stating that they would be interested in purchasing this device, and I would appreciate your contacting them and handling the deal for us. I think we decided upon a price when we were discussing it before. We will be glad to be guided by your judgment in the matter since it is one of our own mills and we do not anticipate using the device again.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m

cc: Mr. A. G. New
Mr. J. M. Bailey

General Counsel Exhibit L-22

File 822

DEERING MILLIKEN RESEARCH CORPORATION

DATE: January 16, 1956

TO: Abbeville, R. C. Edwards
Darlington, J. M. Oeland
Drayton, G. G. Simmons
Gaffney, J. J. Norton
Hartsville, I. S. Pitts
Judson, J. M. Bailey
Laurens, A. T. Wilbanks
McCormick, Fred Thompson
Monarch, L. C. Ellis
Lockhart, J. A. Ferguson
Pacolet 3 & 5, C. T. Holland
Pacolet 4, J. M. Jackson
Pacolet 6, Winston Garth
Ottaray, H. L. Pratt

FROM: R. W. McCullough

SUBJECT: Roving Frame Bobbin Gear Setting Gauges

Some time ago we developed a gauge to facilitate the proper setting of bobbin gears on roving frames. Up until that time it had been usual to find bobbin gears set much too wide and this improper setting was causing rapid wear of these gears.

The use of the setting gauge virtually eliminated the uncertainty as to how much play was actually left in the gear pair, and we set up a tolerance of a maximum play of ¼" as indicated on the gauge.

It has come to our attention that some mills are misusing the gauge and jamming the bobbin gear into the bobbin drive gear so that no play at all is allowed and actual metal to metal interference occurs. This type of poor maintenance is more serious and costly than the previous practice of allowing the gears too wide a setting.

It is recommended that the roving frame fixers and overhaulers use the bobbin gear gauge in their work, and that the tolerance be established as: "between 3/16" and 5/16" motion of the pointer on the bobbin gear gauge." Please

bring this to the attention of your maintenance men, roving frame fixers, and machinery inspectors.

R. W. McCULLOUGH/j

RWMcC/j

cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. George Asnip
Mr. Sterling Smith
Mr. Roger Milliken
Mr. Harry Defore
Mr. H. C. Byrd
Mr. K. M. Lowry
Mr. Russell Bush

General Counsel Exhibit L-24

DEERING MILLIKEN RESEARCH CORPORATION

DATE: July 22, 1955

TO: All Superintendents and Managers

FROM: R. W. McCullough

SUBJECT:

Mr. William Rhymer, who has been working with many of the mills on maintenance and special applications of electrical and electronic instruments, has submitted his resignition from the Research Corporation effective July 30. He plans to go into business for himself in Union, South Carolina.

We have received favorable comments on Mr. Rhymer's work from several of the mills whom he helped and we are sorry to lose his service.

We will attempt to find a replacement and would like to have recommendations from anyone who knows of a suitable candidate for the job.

R. W. McCULLOUGH

RWMcC/bk

cc: Mr. George Asnip
Mr. A. B. Sibley
Mr. M. C. Stone
Mr. Sterling Smith
Mr. Russell Bush
Mr. Roger Milliken
Mr. Harry Dafore
Mr. H. C. Byrd
Mr. K. M. Lowry

General Counsel Exhibit M-1

DEERING MILLIKEN SERVICE CORPORATION

PLACEMENT DEPARTMENT

Date: September 20, 1955 Copies:

To: Mr. J. M. Oeland

From: C. G. Johnson

Subject: Analysis of Supervisory Force—Darlington Manufacturing Company

The following analysis covers all supervisors up to the level of plant superintendent. The ratings of job performance and potential were made by you. Any rating is based largely upon personal opinion and is subject to later revision as we may either underestimate or overestimate a person's performance and potential. Ratings are also relative and depend upon the standards established by the individual making the rating. A performance rated "satisfactory" by one person might be considered "very good" or even "unsatisfactory" by another.

The following recommendations are made:

1. Darlington should hire two trainees per year for the next two years. These should be men interested in manufacturing. One should be trained for spinning, one for carding and two for weaving. There are no designated replacements at the second hand level in carding or weaving.

2. We should be more selective in the men to whom we make offers.

3. Darlington should attempt to make promotions from the college trainee group in the line organization as vacancies occur, selecting men who are judged to

have the capacity to advance more than one step. Presently, there is only one college graduate in the line organization supervisory group.

4. We should work towards the point where 50% of the second hands and 75% of the overseers have promotional possibilities. Although only five of the present supervisors are judged to have reached their limit, only three are considered to have the potential to advance more than one step. The remaining nineteen could advance one step or take a larger job. There should be several men with good potential who are being developed.

5. It must be recognized that an adequate training program will cost money and that to function properly it may be curtailed, but must not be stopped, regardless of conditions.

6. Educational work must be done to attain wider acceptance of the college trainee program among all supervisors.

7. Those men employed as trainees should be advanced as rapidly as possible without upsetting the organization.

General Counsel Exhibit M-2

November 11, 1955

Mr. C. C. Johnson
Placement Department
Greenville, S. C.

Dear Charlie:

This week we were discussing with Harry DeFore the possible advantages we can receive from using a tension analyzer we recently bought. The question came up as to whether we could afford to put a full time person on this analyzer. In the discussion Harry suggested the possibility of our securing a cooperative student specializing in textiles. Harry said these students would be out of college for three months at a time earning enough to complete their college course.

We are wondering if it is possible to secure such a student, and how we would go about it. It is not absolutely necessary that we get a textile student, but I do feel it would be well for us to get either a mechanical engineering or electrical engineering student. It may be possible that we would have to pay more than our regular college trainee rate. We would be willing to do this for a period of time in order that we could get some idea of what the program would develop into.

We would appreciate your suggestions and advice on this problem.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m

cc: Mr. Hawkins
Mr. Goodwin

General Counsel Exhibit M-3

File

DEERING MILLIKEN SERVICE CORPORATION

PLACEMENT DEPARTMENT

Date: November 14, 1955 Copies:

To: Mr. J. M. Oeland

From: C. G. Johnson

Subject:

Your letter of November 11, regarding a co-op student, poses somewhat of a problem. The only school that I know of in this area that is operating on the quarter system is Georgia Tech. The others which might provide the kind of training you are looking for are on a semester basis. Mr. J. G. Wohlford is director of cooperative courses at Tech. You might write him, explaining your problem and request that he advise if he has a co-op student who would be interested in an opening such as yours. In the past, he has told me that they hear of many more job opportunities than they have students available for them. Either Pacolet #4 or Pacolet #6 has one or more men who are co-oping at Tech. It might be possible that you could borrow their man for a definite period of time. The opening, as you described it, sounds as though it would be an excellent training opportnity. There is also the possibility that you and another mill could share a man on a full time basis. What does Mr. Pitts at Hartsville to about this same situation? Would it be possible to use someone from D.M.I.E.D. or from the Cotton Department on a special assignment basis? I cannot tell you just how these two departments are fixed at the present time. The only other thing that I can think of would be to get a man attending Coker College who wants part time work. It would be very questionable that

he would have the kind of background you wish. A similar student at the University of South Carolina would be fine, but is seems to me that Columbia is too far from Darlington to commute.

CHARLIE

CGJ/cm

General Counsel Exhibit M-4

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, South Carolina

Date: March 23, 1955

To: Mr. J. M. Oeland, Darlington

From: C. G. Johnson

Subject: Supervisory & Trainee List.

At Mr. Milliken's request, we are preparing a list of certain supervisory and trainee personnel at all the mills. Enclosed is a pencil list we have prepared from data available in the Placement office. Will you please check this, making any corrections or additions necessary, and return it to the Placement Department as soon as possible. When the list is typed in final form, we will send one copy to the General Manager or Treasurer, and one to the Plant Manager or Superintendent.

The list should include the following up through the level of Assistant Plant Superintendent in line, staff, and office functions:

(1) Supervisors originally employed as college trainees and trainees presently working employed through December 31, 1954, unless they have reached a supervisory rank above Assistant Plant Superintendent. Do not include those in military service.

(2) Non college supervisors at the level of overseer or higher who may advance within your unit, or are capable of assuming greater responsibilities in another D. M. unit.

General Counsel Exhibit M-4

(3) Non college supervisors at the level of second hand who are considered to have the potential to advance more than one level of supervision, e.g. Second Hand to General Overseer, Department Superintendent, or Assistant Plant Superintendent.

General.

(1) The column "Salary" is to be left blank. This will be filled in later if the information is desired.

(2) Where the information in our files was questionable or not available, the spaces have been underlined in red. Please see that these are corrected or filled in.

(3) Please check job titles to see that these are correct.

(4) The information is to be as of March 31, 1955. Ages are computed to the previous birthday as of this date.

Charlie

CGJ:mcj
Enclosure.

sent in 3/30/55

General Counsel Exhibit M-5

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, S. C.

November 28, 1955

To: Mr. C. E. Anderson
Mr. J. M. Bailey
Mr. G. D. Baker
Mr. Phillips Byfield
Mr. S. J. Craig, Jr.
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. W. F. Garth
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. T. E. Peden
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt, Jr.
Mr. H. B. Risher
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill

CC: Mr. George Asnip
Mr. K. M. Lowry
Mr. J. A. Meehan
Mr. Russell Newton
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. T. D. Truluck

FROM: Charles G. Johnson

SUBJECT: Trainee Agreement

General Counsel Exhibit M-5

At a meeting of the Training Committee on November 15, 1955, it was agreed that we would employ college trainees on a salary basis if we could find a plan that would conform with governmental regulations. It was also agreed what we would offer salaries of $350.00 per month minimum to men with semi-technical and technical degrees (this includes textiles) and $325.00 per month minimum to men with liberal arts degrees.

The plan shown on the attached sheet has been checked and approved by Mr. R. L. Collett and Mr. Henry Sloan. If you approve and use this, it will not be necessary for the trainee to sign an individual agreement, but it should be a policy which each trainee thoroughly understands. The trainee should keep an accurate record of his hours of work and also of his days of leave if he takes them. This leave feature has to be included in case you want to let the man off on certain occasions for purely personal reasons. The number of days can be greater or less than four per year.

CGJ

CGJ/cm
Attach.

General Counsel Exhibit M-5

TRAINEE AGREEMENT

(Note: This is for $325.00 per month on $3,900.00 per year. These figures are not to be shown in agreement or policy.)

You shall be paid a salary of $75.00 per week for a scheduled work week up to 48 hours. This salary is arrived at on the basis of 40 hours per week at $1.4423 and eight hours at $2.1635. You will be compensated for hours worked in excess of 48 at an hourly rate of $2.1635 per hour.

Should you be absent from work for short periods because of personal illness, sickness or death in your family, holidays, vacation, temporary plant or department shutdown, jury duty, or temporary military duty, your salary shall continue as usual.

You may take up to four (4) days leave per year at your convenience. Should you be absent from work during a week for purely personal reasons in excess of four days per year, your salary for such week shall be reduced by an amount equal to the number of hours absent at $2.1635 per hour up to eight (8) hours of absence and at $1.4423 per hour for those hours of absence in excess of eight (8).

(Note: For a salary of $350.00 per month or $4,200.00 per year, the weekly salary should be $80.75 and the hourly rates $1.5529 and $2.3294. If you go above the minimum salary figures, the weekly salary and hourly rates should be calculated.)

General Counsel Exhibit M-5

Two copies of this agreement are enclosed. Will you please indicate below if you plan to use a salary basis for employing trainees and return one copy to the Placement Office so we may advise the men interviewed at various schools?

We (will) (will not) employ trainees at minimum salaries of $325.00 and $350.00 per month as outlined above.

Please explain if you will use some other method.

MILL .....

SIGNED .....

DATE .....

General Counsel Exhibit M-6

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, S. C.

December 22, 1955

To: Mr. E. O. DeFore
Mr. Winston Garth
Mr. W. S. Manning
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. G. G. Simmons
Mr. M. C. Stone
Mr. F. A. Thompson

FROM: C. G. Johnson

SUBJECT: Trainee Agreement

On November 28, 1955 we sent a memorandum to all mills, showing a suggested trainee salary agreement and requested that you advise us on one copy of the agreement if your mill was willing to go along with the amounts and the salary basis.

We shall appreciate your returning this at your earliest convenience so we may compile the information. School visits start January 9, 1956 and we wish to tell those students interviewed what salary offers they may expect.

The majority of the mills that have replied indicated that they will use the salary basis. Most of the others have approved the amounts but wish to remain on an hourly basis.

CGJ/cm CGJ

General Counsel Exhibit M-8

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, S. C.

December 22, 1955

CC: Mr. K. M. Lowry
Mr. Russell Newton

To: Mr. E. O. DeFore
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

FROM: C. G. Johnson

SUBJECT: Summer Employment of College Professors

The school I. E. and I. M. heads who were our guests October 9-12, 1955 said that frequently members of their staff, and professors in other departments were available for summer employment.

On a limited number of occasions, some of our mills have employed professors for special assignments. This appears to be an excellent public relations idea, giving the professors an opportunity to augment their income, see the opportunities that exist for graduates in our organization, and at the same time, work on projects that we can't get to or solve with our regular force.

General Counsel Exhibit M-8

During 1956, would you be interested in having a professor in one or more of your mills? If so, what background would you like him to have—Textile—Industrial Engineering—Statistics—Mechanical Engineering—Electrical Engineering—etc.? To what project or projects would you like to assign him? How much would you be willing to pay him?

We shall appreciate your comments on this.

CGJ/cm

CGJ

General Counsel Exhibit M-9

December 27, 1955

Mr. C. G. Johnson
Placement Department
Greenville, S. C.

Re: Summer Employment of College Professors

Dear Charlie:

It is our understanding that Ken Lowry is trying to arrange for us to use some of the students at I. T. T. for summer employment. If we are fortunate enough to get some of these students we do not think we could use the college professors in addition to the students. You might work with Mr. Lowry on this and see where we are getting on the I. T. T. students.

Very truly yours,

J. M. Oeland
Treasurer

jmo/m

General Counsel Exhibit M-10

Deering Milliken Service Corporation
Placement Department

July 18, 1956

To: Mr. J. M. Bailey
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

CC: Mr. George Asnip
Mr. E. O. Defore
Mr. K. M. Lowry
Mr. Roger Milliken

FROM: C. G. Johnson

SUBJECT: Data re Trainees Employed and Separated 1950-1955 Inclusive.

Following the meeting July 17, 1956 one of the Treasurers requested that we distribute the information that was presented at the meeting re trainees.

CHART I Shows trainees separated at three months intervals following employment up to five years. This chart gives the number, percent and investment loss for each three months interval and the accumulative figure.

CHART II Shows by mills the number of trainees employed, separated, the percent separated and investment loss. The mills are in the order of percent separated.

CHART III Shows the reasons the 293 men gave upon leaving our organization by number and percent.

General Counsel Exhibit M-10

CHART IV Shows by schools from which we secured the greatest number of trainees, the number employed, the number separated and the percent separated. This chart also shows the percentage of men we have retained by type of degree. Retention of men with textile degrees has been 35.2% greater than that of men with technical and liberal arts degrees.

Recommendations:

In a survey of 144 companies Mr. Frank Endicott of Northwestern University reported that companies losing 50% or more of their trainees within a 5 year period gave the following major reasons for the losses.

a) Offered higher salary elsewhere.

b) Wanted to live elsewhere. Wife unhappy. Wanted to live nearer home.

c) Sought faster progress—Desired more responsibility.

d) Disliked travel, hours, or pressure of job.

e) Did not like the work. No longer interested in our type of industry.

f) Not suited to our type of work—Poorly fitted for job.

The companies which had retained over 60% of the men hired five years ago gave the following major reasons:

a) Accurate, honest presentation of type of business, job, advancement, and opportunity. Don't oversell.

b) Training program which is well planned, interesting, thorough, informal, and active.

c) Very careful selection — Improved interviewing skills.

d) Review salary and progress regularly—Recognize accomplishment—Advance on merit.

e) Increase responsibility as quickly as possible—Move them around.

f) Sincere, friendly supervision—Treat them like men —As part of a team.

Mr. Endicott also reported that the companies retaining the greater percentage of their men paid higher starting salaries.

To help us get better men and retain a higher percentage of them, the following recommendations are made:

1. Make starting salaries competitive.
2. Be more selective—Emphasize quality, not quantity.
3. Increase use of tests as they are proven.
4. Employ prospective trainees for summer work wherever possible.
5. Use co-ops to greater extent.
6. Formalize training along lines of report issued by Mr. W. M. Thornton May 21, 1956.
7. Do not keep capable men on routine assignments too long.
8. Be more realistic in explaining "Hard Work" to prospective trainees.
9. Let each man know where he stands and what he can expect on a regular schedule. Recognize good

work—Point out poor work and how to improve. Explain why. A sincere interest in the man and sufficient attention so that he will know he is not forgotten will make the trainee feel that he is a part of the organization.

10. Cross transfer mill to mill and group to group.
11. Do not release trainee for inadequate performance before checking other mills through Placement.
12. Talk with man who is going in MS and keep in touch with him while there.
13. Sell supervisors on the advantages of trainees. The trainee is not to be given rough treatment because the supervsior thinks the man is there to take his job.

Should you wish additional copies of these data, please advise the Placement Department.

CGJ:lw

CGJ

General Counsel Exhibit M-10

CHART I

Trainees Separated and Investment Loss 1950-1955

Time Employed Months	Total Separated This Period	Total Separated Accum.	% of Total Separated This Period	% of Total Separated Accum.	Investment Loss This Period	Investment Loss Accumulative
0-3	34	34	11.60	11.6	45,900	45,900
3-6	45	79	15.36	27.0	122,625	168,525
6-9	28	107	9.56	36.5	97,300	265,825
9-12	22	129	7.51	44.0	92,950	358,775
12-15	24	153	8.19	52.2	101,400	460,175
15-18	28	181	9.56	61.8	118,300	578,475
18-21	22	203	7.51	69.3	92,950	671,425
21-24	13	216	4.44	73.7	54,925	726,350
24-27	19	235	6.48	80.2	80,275	806,625
27-30	8	243	2.73	82.9	33,800	840,425
30-33	12	255	4.10	87.0	50,700	891,125
33-36	9	264	3.07	90.1	38,025	929,150
36-39	8	272	2.73	92.8	33,800	962,950
39-42	5	277	1.71	94.5	21,125	984,075
42-45	4	281	1.37	95.9	16,900	1,000,975
45-48	2	283	.68	96.6	8,450	1,009,425
48-51	3	286	1.02	97.6	12,675	1,022,100
51-54	1	287	.34	98.0	4,225	1,026,325
54-57	2	289	.68	98.6	8,450	1,034,775
57-60	0	289	—	98.6		
60 & Up	4	293	1.37	100.0	16,900	1,051,675
	293		100.00		1,051,675	

The investment loss is based on a cost of $600.00 to employ a trainee plus a cost of $500.00 per month to pay his salary and train him. No return was considered for the first four months, and a 50% return was used for 8-12 months. Training costs were terminated at the end of 12 months. These figures are conservative. In determining time on payroll, the mid point of the period was used—I. E. 9-12 months use 10½. Investment loss in a man who has been with us a year or more would be $600.00 to employ plus 4 months at $500.00, plus 6½ months at $250.00 for a total of $4225.00.

General Counsel Exhibit M-10

CHART II

Trainee and Investment Loss—By Mills 1950-1955

Mill	Number Employed	Number Separated	% Separated	Investment Loss
Gerrish	28	19	68	75,025
Gayley	21	14	67	51,775
Judson	100	64	64	235,150
Abbeville	52	32	62	114,075
Excelsior Fin.	30	18	60	70,800
Kingsley	12	7	58	28,075
Pacolet #6	11	6	55	22,350
Johnston	13	7	54	25,200
Drayton	41	22	54	76,950
Monarch	23	12	52	41,200
Pacolet #4	8	4	50	11,025
McCormick	22	11	50	38,475
Laurens	28	14	50	42,400
Excelsior #2	21	10	48	34,875
Hartsville	15	7	47	22,950
Pacolet #3 & #5	9	4	44	15,400
Darlington	9	4	44	11,025
Excelsior-Union	21	8	38	29,425
Lockhart	19	6	32	24,600
Ottarary	13	4	31	10,400
Gaffney	27	8	30	22,050
Hatch	16	1	6	2,725
Miscellaneous	32	11	34	45,725
TOTAL	571	293	51.3	1,051,675

General Counsel Exhibit M-10

CHART III

Terminations by Cause
Trainees Employed and Separated, 1950-1955

Cause	No.	% Total
Quit	138	47.1
Failed to return from M. S.	34	11.6
Other Textile Concerns	32	10.9
Discharged	28	9.6
Lay Off N.W.A.	17	5.8
Teach and Coach	16	5.5
Dissatisfied	7	2.4
Limited Opportunity	3	1.0
Domestic Reasons	2	.7
Wages Unsatisfactory	1	.3
Miscellaneous	15	5.1
TOTAL	293	100.0

General Counsel Exhibit M-10

CHART IV

Hired and Terminations—By Schools 1950-1955

School	No. Empl.	Separated No.	Separated %
Auburn	6	6	100
Duke	6	5	83.3
Wake Forest	5	4	80.0
Univ. of Ga.	14	8	57.1
U. S. C.	28	16	57.1
Ga. Tech	32	18	56.3
Wofford	41	23	56.1
Furman	20	11	55.0
U. N. C.	13	7	53.8
Presbyterian	21	11	52.4
Erskine	8	4	50.0
N. C. State	57	28	49.1
Clemson	182	83	45.6
North Ga.	22	8	36.4
Sub Totals	455	232	51.0
Other	116	61	52.6
TOTALS	571	293	51.3

Trainee Loss and Retention
Textile Degree Vs Other Degrees

Type Degree	No. Empl.	No. Lost	% Lost
Textile	257	111	43.2
Technical	68	38	55.9
Liberal Arts	246	144	58.5
TOTALS	571	293	51.3
% Retention TEXTILE	56.8	or 35.2% Better	
% Retention Tech & L. A.	42.0		

General Counsel Exhibit M-11

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, S. C.

May 21, 1956

To: Mr. D. R. Arrowood
Mr. C. E. Anderson
Mr. Phillips Byfield
Mr. S. J. Craig, Jr.
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. W. A. Goodwin
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. A. G. New
Mr. W. A. Newton
Mr. T. E. Peden
Mr. H. L. Pratt, Jr.
Mr. George Rankin
Mr. H. B. Risher
Mr. A. W. Stoudemire
Mr. F. A. Thompson
Mr. W. E. Thrailkill
Mr. M. G. Wallace

CC: Mr. George Asnip
Mr. J. M. Bailey
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. K. M. Lowry
Mr. J. A. Mechan
Mr. Roger Milliken
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone

General Counsel Exhibit M-11

FROM: W. M. Thornton

SUBJECT: Formal Training Program

Attached hereto is a summary of the activities constituting the college trainee programs in the Deering Milliken mills. Also included is a recommended outline which may be used as the nucleus for an organized approach to this problem.

We would appreciate the comments or criticisms you may have concerning this recommended procedure.

WMT/cm

WMT
(cm)

General Counsel Exhibit M-11

FORMAL TRAINING PROGRAM

Deering Milliken Service Corporation
Placement Department
April 12, 1956

General Counsel Exhibit M-11

INTRODUCTION

As of December, 1955, we have lost, through resignation, 41.3 percent of the college trainees hired since 1945. This represents a loss of 315 young men thought to have potential supervisory ability. This also represents a substantial financial loss as well as bad publicity for the company in its recruiting campaign.

This type information finds its way back to the colleges at which we must conduct our recruiting. This multiplies the loss we sustain in that it will not only make the interviewing job more difficult, but it will tend to discourage many desirable men from making the initial contact with the company.

It will be to the company's advantage to improve our performance with regard to trainee retention. It would result in a monetary saving and would tend to encourage more good men to seek employment with the organization.

This report represents a summary of training offered college trainees in the mills and recommendations for a standardized approach to the training problem. Careful consideration should precede selection of any of the media suggested in this report. The final test of any college trainee program must be, "Does it prepare the man for a supervisory position?"

In response to a request from this department, a majority of the mills submitted information about their programs for trainees. This information is summarized below. The most striking fact about the programs is the lack of uniformity. However, there is similarity of specific training media used.

General Counsel Exhibit M-11

The professors who were our guests in October, 1955 pointed out that the students consider a formal or organized training program of major importance as it assists them in the transition from school to work and to get a better appreciation of what industry expects of them. Such a program will give us a better opportunity to evaluate the trainee's capabilities and give him an opportunity to find the type work for which he is best suited.

* * *

This summary indicates that there are many systems in operation with each mill meeting its needs as they arise. It also indicates that there is a framework within most of the mills around which an organized training program can be developed.

* * *

General Counsel Exhibit M-12

DEERING MILLIKEN SERVICE CORPORATION
PLACEMENT DEPARTMENT

Date: March 28, 1956 Copies:
To: Mr. J. M. Oeland
From: C. G. Johnson
Subject:

Attached hereto is the information we were requested to prepare to assist the sponsors in making contacts at their assigned school and arranging a tour for some of the better men from that school. It is highly desirable for the tour to be completed by April 27, 1956.

As you know, you were requested to act as sponsor for Presbyterian College. Until he left there several years ago, Mr. H. G. Prince handled the placement at Presbyterian. He was extremely interested in Deering Milliken and always had a large group of men lined up for me to see. In the past several years, the placement has been handled by several different people and is now in the hands of Dr. Bellingrath. He is a wonderful person, very friendly to us, but does not push the placement function. One thing that you might do is stress to the officials at Presbyterian the importance of placement work and emphasize how much it can mean to the individual students to have the opportunity to discuss employment with various companies.

Since all the Placement Department contacts are made through the school Placement Department or through one person handling the placement work, please do not in any way by-pass the individual listed as Placement Director.

CHARLIE

CGJ/cm
Attach.

General Counsel Exhibit M-12

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, S. C.

March 27, 1956

COLLEGE RECRUITING PROGRAM

In the past five years the recruiting of college graduates has skyrocketed all over the country. For 1956, a group of 160 selected companies were seeking 49.9% more engineers and 16.8% more non-engineers than in 1955. Starting salaries have increased as the greater demand, lower enrollments, etc., have shortened the supply.

To assist in securing the number and kind of men we need in the Deering Milliken organization, the Management Development and Training Committee, meeting on March 23, 1956, approved the following program.

(1). The number of schools visited will be curtailed, concentrating on the smaller liberal arts colleges in the two Carolinas and Georgia, with only few exceptions.

(2). A mill head will be assigned as a sponsor at each school.

(3). Mr. Milliken will maintain an active interest in the program and work with the sponsor when time is available.

(4). The sponsor shall maintain close liaison with the school president and/or department heads.

(5). Each sponsor shall arrange a luncheon or dinner meeting with the school president and/or department head, along with interested faculty members and a special group of selected students. These students shall be ones designated as very superior by the school and available for industrial employment. In general, we shall probably have a better chance of interesting and competing salary-wise for young non-veterans than for the veterans who are in such great demand.

(6). The number of students in the group may vary from one or two from the smaller schools, up to a dozen from the larger schools. The groups will be invited to tour several of our mills at company expense. Luncheons and dinners will be arranged during the tour so the students may meet representative mill heads. The sponsor is to arrange the tour. The Placement Department will coordinate the tours.

Please clear suggested tour dates through the Placement Office so several groups will not be scheduled at the same mill on the same day.

(7). The men from the groups will be assigned to various mills, according to qualifications, demand and the interest of the students. In no event should a man be invited to more than two of our mills for a job offer.

(8). Since these men will be especially selected, salary offers should be $350.00 per month minimum, guaranteed.

(9). Each sponsor should contact his designated school immediately and arrange for the dinner meeting at the

school to be held as soon as possible and the tour completed by April 27, 1956.

(10). The sponsors will be asked to make a report, telling what has been accomplished and making sugestions to further the program after the end of the school year. Attached are:

a. List of schools to be visited, sponsor assigned, school head, placement director, and members of faculty known well

b. Suggested tours for students from school

c. List of men employed from the school, present position, if working and name only, if no longer employed.

d. Some points that you might wish to bring out when talking with the students

e. A list of the men from these schools who have been contacted following a recruiting visit this year

CGJ/cm

C.G.J.

General Counsel Exhibit M-12

SUGGESTED POINTS TO BE BROUGHT OUT IN DISCUSSION WITH STUDENT GROUPS

1. Kind of men we are seeking:
   (a). Having ability
   (b). Having ambition
   (c). Having character
   (d). Having leadership ability
   (e). Men who in future can become mill heads
2. Organization and Size:
   (a). Deering Milliken Sales Agent—28 units with 25 in South
   (b). Mills have kept corporate identities and operate as separate units therefore, we have advantages of large and small organization
   (c). Over 600 million yards fabric annually, from cotton, wool, various synthetic fibers, and blend of natural and synthetic fibers.
   (d). Spent approximately 125 million in past 10-12 years in expansion and modernization. 8 new mills. Some older mills completely overhauled and equipped with new machinery.
   (e). Southern location—no unions
   (f). Top management progressive and aggressive—Mr. Roger Milliken
   (g). Research Corporation and Service Corporation.

General Counsel Exhibit M-12

3. Training Program:

(a). Openings in both line and staff at mills and in central staff departments.

(b). Usually "On-the-Job"—Learning by doing

(c). Supplemented by classroom work, conferences and individual coaching and counseling

(d). Adapted to individual so man may advance as rapidly as possible—Varies mill to mill

(e). Advancement based on demonstrated merit and ability.

4. Opportunities and Future:

(a). Textiles here to stay—one of three largest manufacturing industries

(b). Highly competitive—not easy—but excellent opportunity and real challenge to capable men. Textile executives among higher income group in country.

(c). Man hired by one unit—not Deering Milliken—but is available to entire organization. Stress cross transfers mill to mill—staff to line, etc.

(d). Starting management develop program which will help enhance opportunities for capable men.

(e). Records show men who have remained with us have made excellent progress.

General Counsel Exhibit M-12

Following is a list of Presbyterian College graduates hired and retained in the Deering Milliken organization 1945 to 1955, by year and mill:

T. L. Eates	1947	Monarch-Union	Overseer
Wm. Green	1950	McCormick*	Asst. Overseer
Tom Mundy	1950	McCormick*	Ch. I. E.
E. L. Dickenson	1951	Laurens	Trainee
C. M. Bettis	1952	Monarch-Union	Asst. Overseer
J. E. Phifer	1952	Drayton	Time study
M. M. McGahee	1952	Kingsley	Mil. Svc.
E. A. Fuld	1953	Darlington	Mil. Svc.
Cary P. Moore	1953	Laurens	Jr. I. E.
G. K. Blue	1954	Monarch-Union	Mil. Svc.
R. E. Ware	1955	Abbeville	Trainee

The following Presbyterian College graduates have been hired and lost in the DM organization through resignation unless otherwise specified. Dates hired and lost are given.

An asterisk (*) indicates transfer prior to loss.

H. S. Howie, Jr.	9-50	8-52	Judson
E. P. Blakely	6-51	3-52	Laurens
V. Dusenburg	7-52	5-53	Lockhart—Released
E. L. Mann	2-52	8-54	Monarch
J. W. Curtis	10-52	6-55	Kingsley
J. M. Bolt	2-52	6-54	Laurens—Laid Off
J. A. Williams	8-53	11-53	Darlington
L. P. Dondero	2-53	7-53	Gaffney—Released
R. P. Jackson	6-53	3-54	Judson
G. Howe	3-53	6-54	Laurens
J. A. Banks	1-53	?	*Hatch

General Counsel Exhibit M-14

April 16, 1956

Captain James H. Rutledge
Presbyterian College
Clinton, S. C.

Dear Captain Rutledge:

We would like to extend to you an invitation to luncheon at the Mary Musgrove Hotel in Clinton at 12:30 Friday, April 20th. The writer and some others associated with the Deering Milliken group of mills are planning to meet with some of the graduating students of Presbyterian College at this luncheon and discuss opportunities of employment with our group of mills. We understand that you are leaving the army in July and might be interested in civilian employment. I will look forward to meeting you at that time.

Very truly yours,

J. M. Oeland
Treasurer

jmo—m
Blind copies to: K. M. Lowry
C. G. Johnson

General Counsel Exhibit M-15

April 25, 1956

Dr. George Bellingrath
Academic Dean
Presbyterian College
Clinton, South Carolina

Dear Dr. Bellingrath:

I want to express to you my appreciation for your help in lining up the students who had dinner with us last Friday. I trust that our plans will materialize and that they will visit Laurens today, and express their willingness to be considered as possibilities for trainees in one of the mills. I think I made it clear that Mr. Johnson will then circulate the names of those interested in a job to the mills, and they in turn will be invited individually to any of the mills that are interested in getting the different men.

Let me again express my appreciation to you, and I shall look forward to other contacts in the future.

Very truly yours,

J. M. Oeland
Treasurer

jmo—m

cc: Dr. W. M. Brown
Mr. C. G. Johnson

General Counsel Exhibit M-16

May 15, 1956

Mr. C. G. Johnson
Placement Department
Greenville, S. C.

Dear Charlie:

You will find enclosed herewith six college men who have applied to us for summer work and whom we are planning to use.

You will notice one Clemson boy, Jerry R. Weaver, who is taking Industrial Management. It is our understanding that he is a rising senior, but have not confirmed this as yet. We are planning to use Jerry in our laboratory to continue the work that Wendell McGowan, the co-op student from Georgia Tech has been doing in our tension control.

It was our understanding at the last meeting that we set up a rate of $1.25 to be paid to technical students who are rising seniors. In this case you will notice that he is not taking textile engineering, and we would like to have your opinion as to the rate we should pay Jerry. In the cases of the other men, it is our plan to pay them the rate of the job on which they are placed and try to see that they get work in line with their training and education.

Very truly yours,

J. M. Oeland
Treasurer

jmo—m
cc: Mr. Milliken

General Counsel Exhibit M-17

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, S. C.

April 16, 1956

To: Mr. D. R. Arrowood
Mr. C. E. Anderson
Mr. E. G. Allee
Mr. S. J. Craig, Jr.
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. W. A. Goodwin
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. T. C. Jolly
Mr. W. S. Manning
Mr. A. G. New
Mr. W. A. Newton
Mr. T. E. Peden
Mr. H. L. Pratt, Jr.
Mr. George Rankin
Mr. H. B. Risher
Mr. A. W. Stoudemire
Mr. F. A. Thompson
Mr. W. E. Thrailkill
Mr. M. G. Wallace

CC: Mr. George Asnip
Mr. J. M. Bailey
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. K. M. Lowry
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone

FROM: C. G. Johnson

SUBJECT: Employment of Undergraduates for Summer Work

We have been requested to present some information to Mr. Milliken at a meeting April 24, 1956. Will you please

General Counsel Exhibit M-17

fill in the information requested on the attached sheets and return one copy to the Placement Department so we may have it by April 21, 1956, if at all possible?

It is suggested that we concentrate on Juniors who may be available for employment upon graduation.

CGJ(cm)

CGJ/cm

SUMMER EMPLOYMENT OF UNDERGRADUATES

We wish to employ ..... undergraduates for summer work.

We have already made the following offers and those indicated have accepted:

	OFFERED	ACCEPTED
In High School	.....	.....
High School Grads	.....	.....
College Freshmen	.....	.....
College Sophomores	.....	.....
College Juniors	.....	.....

We (will) (will not) employ R.O.T.C. students who have to go to summer camp.

We will pay $..... minimum and $..... maximum per hour.

These men will be guaranteed ..... hours of work per week.

They may be employed from ..... 1956 to ..... 1956.

General Counsel Exhibit M-17

They will be given assignments such as:

.....

.....

.....

.....

We would prefer men taking: Textiles .....

Chemistry .....

Engineering .....

Other .....

MILL: .....

DATE: .....

General Counsel Exhibit M 18

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, S. C.

June 18, 1956

CC: Mr. K. M. Lowry

To: Mr. C. E. Anderson
Mr. George Asnip
Mr. J. M. Bailey
Mr. S. J. Craig, Jr.
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. J. A. Meehan
Mr. A. G. New
Mr. R. B. Newton
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. H. B. Risher
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone
Mr. W. E. Thrailkill

FROM: C. G. Johnson

SUBJECT: Recruiting Program for 1956-1957 Season

A school sponsor and a co-sponsor from our organization have been designated for each of the twenty two (22)

schools to which recruiting visits will be made to interest prospective graduates and undergraduates in our company.

The function of the sponsors and co-sponsors will be to cooperate with the Placement Department in making contacts with faculty and students at their assigned schools to tell them about and sell them on the Deering Milliken organization and the many opportunities we have for capable men. The sponsors and co-sponsors will make any suggestions they can that may enhance the value of the program and put us in a position to employ the number and quality of college men needed in the organization.

The recommended approach and the one which is outlined in this letter is:

1. The sponsor, co-sponsor, other management representatives from the organization and the writer will visit each school during October and November. When possible, Mr. Milliken and Mr. Lowry will accompany the group. A lunch or dinner meeting will be arranged with school officials and selected faculty members. Through short talks, the Deering Milliken representatives will tell the school people the kind of men we are seeking and about the opportunities that exist in the textile industry in general and in the Deering Milliken organization in particular. The school representatives will be requested to comment and ask questions.

All arrangements for the dinners will be made through the Placement Department. School heads—some deans and certain department heads and always the school Placement Department head, will be included in the group. If the sponsors know of any particular faculty member who could be especially helpful to our cause, his name should be called to the attention of the Placement Department.

General Counsel Exhibit M 18

2. A recruiting visit will be made to the schools during November, December, January and February. Ten days or two weeks prior to the recruiting visit, each school representative that has been our guest, or was invited to be out guest, will be written a letter telling when we will visit the school and requesting that they suggest to those students who meet our requirements that they come in for a personal interview.

The sponsor and/or co-sponsor, in person, should spend at least one day interviewing at their assigned schools with the Placement Department representative. Information shall be recorded concerning each man interviewed. The Placement Department shall arrange all original interviewing visits.

3. Following the interviews, selected men will be invited to tour several of our mills during February and March at our expense. In each instance, the students will tour the mill of the sponsor. An attempt will be made to show each group a cotton mill, a fine goods mill and a woolen or worsted mill. The students will be entertained at a dinner the evening before or the evening of the tour day. Representatives from the mills in the area will be invited to attend the lunches and dinners during the tour. They will do all possible to evaluate the men and sell them on our organization. They should advise the Placement Department of any impressions they gather about the man, either for or against him.

Information regarding men not invited to tour the mills will be circulated to all units as is presently done. Those men invited to tour the mills who are unable to do so at the time suggested, will be offered the opportunity to join another group. If they do not take advantage of the second

opportunity, information regarding them will be circulated in the usual manner. Any mill in the group may contact the men whose names are circulated.

4. The names of the men who make the tours will be assigned to not more than two mills for follow-up and specific job offers. The number of men referred to a mill or department will be in proportion to the number of men they specify they wish to hire. As nearly as possible, it will be in accordance with the mill's specifications and with the student's desires re type of product, kind of work, location, etc. When the mill is not interested in the man referred to them, they should immediately advise the Placement Department so this man may be referred to another mill.

5. The textile schools of N. C. State, Clemson, Georgia Tech, and Auburn are "open game" and those students may be contacted by any mill in the group. However, it is suggested that special interviewing trips to the school be kept at a minimum to avoid confusion. Mills may send a representative to accompany the Placement Department representative during the regular interviewing schedule if they so wish.

Other than at the Textile Schools named, selected men should not be contacted by any mills except those to whom they are specifically referred.

In the follow-up, the mill should invite those men in whom they are interested to visit at company expense. At that time they may be tested, interviewed at length and sold on the opportunities existing at the particular mill.

* * *

General Counsel Exhibit M-19

Deering Milliken Service Corporation
Placement Department
Post Office Box 2000
Greenville, South Carolina

August 16, 1956

To: Messrs. C. E. Anderson
George Asnip
J. M. Bailey
S. J. Craig, Jr.
E. O. DeFore
J. A. Ferguson
L. J. Fisher, Jr.
Winston Garth
J. M. Jackson
W. S. Manning
J. A. Meehan
A. G. New
R. B. Newton

To: Messrs. J. J. Norton, Jr.
J. M. Oeland
I. S. Pitts, Jr.
H. B. Risher
A. B. Sibley
W. A. L. Sibley
G. G. Simmons
M. C. Stone
W. E. Thrailkill

CC: Messrs. K. M. Lowry
Roger Milliken

FROM: C. G. Johnson

SUBJECT: Luncheon and Dinner Meetings with School Faculties

* * *

The schools are anticipating this visit so a schedule has been prepared that we may have from 6 to 8 DM representatives at each school, with the exception of U. S. C. and Clemson where 10 and 15 respectively are scheduled. Each sponsor and co-sponsor has been scheduled to attend from 4-6 of these meetings. Some other members of the organization have been scheduled to attend a limited number of the meetings also.

* * *

General Counsel Exhibit M-21

Deering Milliken Service Corporation
Placement Department
Post Office Box 2000
Greenville, South Carolina

October 8, 1956

To: Messrs. C. E. Anderson
S. J. Craig, Jr.
L. C. Ellis
J. A. Ferguson
L. J. Fisher
W. F. Garth
C. T. Holland
J. M. Jackson
T. C. Jolly
W. S. Manning
A. G. New
R. C. Owings
T. E. Peden
H. L. Pratt, Jr.
H. B. Risher
F. A. Thompson
W. E. Thrailkill
M. G. Wallace

CC: Messrs. George Asnip
J. M. Bailey
E. O. DeFore
K. M. Lowry
J. A. Meehan
J. J. Norton, Jr.
J. M. Oeland √
I. S. Pitts, Jr.
A. B. Sibley
W. A. L. Sibley
G. G. Simmons
M. C. Stone

FROM: C. G. Johnson

SUBJECT: Employment, Training and Retaining of College Trainees

Starting salaries offered college graduates will be higher during the 1956-57 recruiting season than they were this year. The demand for these men is still increasing. The men of the calibre we are seeking will have many interviews and receive many offers. It will require considerable effort on our part to attract the men we want and to hold them once we employ them.

While visiting all the mills during August and September 1956 the problem of employing, training, and retaining

college graduates was discussed at length. The factors mentioned most frequently were:

a. Don't employ more than is needed

b. Be very selective

c. Give the men close personal attention

d. Have training well organized and interesting

e. Move the trainees along as rapidly as possible.

It was brought out that the mill personnel can do much to get and keep the men they want. In the listing of the items or factors mentioned at the mills, there is some overlapping. A review of these factors may bring out some points that will be of assistance in your training program

1. Where the town or living conditions might not be conducive to employment of trainees, concentrate on local students.

2. Use summer work to maximum extent. Employ for summer work those students whom we will have a chance to employ upon their graduation.

3. Employ co-ops. Work with Clemson on Co-op basis.

4. Utilize contacts with faculty made during our series of luncheons and dinners to sell the textile industry and our organization. Where requested, attend these meetings.

5. If applicant is married, invite his wife to visit the mill with him. Show her the mill and community, and do a selling job on her as well as on the applicant.

6. If a married trainee is employed, make the wife feel a part of the community—call on her and give assistance where can.

7. Don't oversell during the interview. Be factual and point out the bad as well as the good.

8. Don't employ more trainees than are needed.

9. Select men to whom offers are made very carefully. Try to continually raise standards.

10. Having found the right man, pay what it takes to get him. Don't lose a good man for a few dollars and then hire a mediocre one.

11. Decide what you want the trainee to know.

12. Have a planned indoctrination or orientation period.

13. To help overcome that "ill at ease" feeling at first, give them an organization chart, with names, and a simple process flow chart or manual of procedures. These will let them know names of people and assist them in finding their way around.

14. Plan a way for the trainees to move along and have definite objectives for them. Let them know how they can progress if they merit advancement. Let them see the door is open to advancement if they have ability and apply themselves.

15. Gain acceptance of the program and trainees from all supervisors. Do a special selling job on those supervisors who are not in favor of the program.

General Counsel Exhibit M-21

16. Be sure of the individuals under whose jursdiction the trainees are placed.

17. Give personal attention to the trainees. Follow their progress closely.

18. Have a good and attractive training program. Where necessary, adapt the program to the individual. Most trainees are lost because, in their opinions, something is wrong with the program.

19. Move the trainees along as rapidly as possible. Don't block their road to progress.

20. Plan the training so the man can feel he is progressing and keep in contact with him to see that he does so. Keep them busy and interested.

21. Plan the training and see that the man is trained correctly. Use vestibule training.

22. Show individual interest in the man—not as just a member of a large group. Assign him to a sponsor.

23. Pull out of training program and put on special assignments as problems arise. See what he can do and if he uses imagination. This will help the trainee feel he is making a contribution.

24. Give the trainee a positive supervisory assignment as soon as possible.

25. It might be desirable to assign trainees to a staff department at first so they can get an overall picture of the plant.

26. Have all trainees take the Dale Carnegie Course.

27. Have all trainees attend the DMIED time study school, whether going to I. E. work or not.

28. Improve communications with trainees. Tell them "Why".

29. If there is no opening within a reasonable time after a man has completed his training, assign him to a staff department such as I. E. to work on special assignments.

30. Periodically get verbal or written progress reports from head of department where the trainee is working. The department head should be the trainees counsellor while in that departmnt.

31. Intensify cooperation between mills and make greater use of cross transfers.

32. Publicize the transfers made.

33. Advise the Placement Department if a man is ready for promotion and there will be no opening in the near future in your plant.

34. If a trainee is not working out, from his or the company's viewpoint, advise the Placement Department so a transfer can be arranged.

35. Advise the Placement Department of aspects of hiring and training that might have either a good or an ad-

verse effect on the program. This information will be circulated to all mills.

36. If it is necessary to terminate a trainee for not measuring up to our standards (not flagrant violation of rules) give him the opportunity to find another job before separating him.

37. Have a representative of the Placement Department visit the mills regularly and meet individually with the trainees to discuss their problems and progress.

38. Keep in touch with those trainees who go in military service. Have different ones, such as Treasurer, Manager, Superintendent, Overseer, Second Hand, Personnel Manager etc. write the man.

39. Get trainees, and their families, to understand and take part in community life.

40. If there is a trainee a mill particularly wants but cannot meet salary requirements for fear of disrupting present scales, have I. E. D. employ him for six months, with the mill footing the bill.

CGJ:lw

General Counsel Exhibit M-22

Deering Milliken Service Corporation
Placement Department
Post Office Box 2000
Greenville, South Carolina

July 23, 1956

To: Messrs. C. E. Anderson
S. J. Craig, Jr.
L. C. Ellis
J. A. Ferguson
L. J. Fisher
W. F. Garth
C. T. Holland
J. M. Jackson
W. S. Manning
A. G. New
R. C. Owings
T. E. Peden
H. L. Pratt, Jr.
H. B. Risher
F. A. Thompson
W. E. Thrailkill
M. G. Wallace

CC: Messrs. George Asnip
J. M. Bailey
E. O. DeFore
J. A. Meehan
J. J. Norton, Jr.
J. M. Oeland
I. S. Pitts, Jr.
A. B. Sibley
W. A. L. Sibley
G. G. Simmons
M. C. Stone
K. M. Lowry

FROM: C. G. Johnson

SUBJECT: Pay-for-College-Trainees

July 19, 1956 Mr. Sterling L. Smith wrote explaining various plans that could be used to provide certain classes of employees with minimum guaranteed weekly income. In his letter Mr. Smith points out that Plan I A, the 48 hour guarantee, is the simplest for paying trainees, if we can provide them with 48 hours of work available, excluding regular holidays, each week.

This plan is the one recommended by the Placement Department. Will you please write advising me if you will

use this plan when employing trainees. We will need this information in the recruiting season that will start this fall.

Starting salaries for college graduates will probably continue to increase for the 1956-1957 season. Will you also please advise me what starting rate ranges you will offer trainee applicants with Liberal Arts and Technical and Textile Degrees. We will get a better selection of men if our rates are more competitive with the other concerns that recruit. The Placement Department recommends monthly starting salary ranges of $350.00 to $375.00 for Liberal Arts graduates and $375.00 to $400.00 for Technical and Textile graduates.

C. G. J.

CGJ:lw

NOTE: This is the only copy being sent to your mill.

General Counsel Exhibit M-23

August 7, 1956

Mr. C. G. Johnson
Placement Department
Greenville, S. C.

Subject: Pay for College Trainees

Dear Charlie:

I have given a good deal of thought to your letter of July 23rd in regard to salary of trainees we might employ.

I agree with you in order to get these men we will probably have to pay a salary range in line with what was outlined in your letter. On analyzing this we find that we are not presently paying college men we have hired and promoted as much as you suggest. This presents a real problem to us to get trainees with the other mills in the organization offering salaries in line with your suggestion. I feel that I can only say at the moment that we will give the matter our further consideration, and will have to go along with stated salaries in the range suggested that will be offered by Deering Milliken mills. We then will have to analyze the situation and the possibilities of the men in question when they are actually hired here at Darlington.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m

General Counsel Exhibit M-24

February 22, 1956

Mr. C. G. Johnson
Placement Department
Box 2000
Greenville, S. C.

Dear Charlie:

We here at Darlington would like to get a master mechanic. When the job came open we took it up with Mr. Bush's department and they recommended Mr. Jimmie Wells who was a second hand at Geffney. Jimmie came down and we hired him but shortly before he was to move an opening came at New Holland that he felt and better opportunities and he asked us to release him. We again have gone to Mr. Bush's department but at the moment they have no one to recommend for the job.

We would appreciate your going over the list of the supervisors in the several mills and let us know if there are any second hands in the shops that the management of the mill feels would qualify for a promotion. We will try to use this information in going back to management and asking them if they would consider letting us have the particular man. In giving us this information we would appreciate your giving as much detail as you have available on certain men.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m
cc: Mr. Goodwin

General Counsel Exhibit M-25

DEERING MILLIKEN SERVICE CORPORATION

ENGINEERING DEPARTMENT

P. O. Box 1605

SPARTANBURG, SOUTH CAROLINA

TO: Mr. J. M. Oeland DATE April 20, 1956

FROM: R. H. Bush COPIES TO: Mr. C. G. Johnson

SUBJECT: Darlington Manufacturing Company

On Tuesday Charlie Johnson and I interviewed some June Graduates at Southern Tech. We were looking for trainees but talked with one man, Roy T. Powell, who might fit your requirements for a Master Mechanic very well. Charlie has sent Mr. Powell's application to you but I would like to give you my opinion of the man.

Mr. Powell spent some 24 years in the Navy as an electrician prior to attending Southern Tech. During this period, he had plenty of experience in maintenance work and learned to handle men. Needless to say, the Navy is very strict about routine maintenance. This one fact could make Mr. Powell a valuable man. I liked Mr. Powell very much and feel it would be well worth while for you to talk with him. Although he would not be familiar with all of your equipment, I am certain he would learn fast.

I do not know what salary would interest him, but it would, of course, not be a trainee rate. I would be very interested in hearing from you if you decide to talk to Mr. Powell.

Russell

General Counsel Exhibit M-26

April 25, 1956

Mr. C. G. Johnson
Box 2000
Greenville, S. C.

Dear Charlie:

I am enclosing herewith the interview record of Roy Thomas Powell with regard to the master mechanic's job we have here at Darlington.

After discussing the matter with Bill Goodwin this mroning we have decided in view of the fact that the man we have been discussing the job with has had mill experience and would know something of the problems we have here, it is our feeling that he perhaps would take care of our job here better than Mr. Powell who has had no mill experience.

We want to express to you our appreciation for your help, and trust that some of the other mills can avail themselves of the services of Mr. Powell.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m
cc: Mr. R. H. Bush

General Counsel Exhibit M-27

DEERING MILLIKEN SERVICE CORPORATION
PLACEMENT DEPARTMENT

Date: June 5, 1956 Copies: Mr. K. M. Lowry

To: Mr. J. M. Oeland

From: C. G. Johnson

Subject:

Recently Mr. Bill Engelson of Wofford College wrote about one of their students, Dick Wallace. I interviewed Mr. Wallace in Spartanburg June 4th. He is from Darlington and is interested in employment there. He thought he would go into military service in July but received his orders which called for November, 1956 and two years of service. Mr. Wallace was returning to Darlington June 4th and said he would go to see you. I was most favorably impressed with him and think he will make an excellent man in the organization.

If you do not have an opening where you can use Mr. Wallace, Mr. Nicholson at Drayton would like to talk with him regarding employment.

CGJ/cm

General Counsel Exhibit M-28

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, S. C.

May 25, 1956

To: Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. Winston Garth
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. J. J. Norton Jr.
Mr. J. M. Oeland
Mr. H. L. Pratt, Jr.

FROM: W. M. Thornton

Mr. Dan Arrowood, of the Hartsville Cotton Mill, called this office yesterday and explained that he needed a college trainee who was ready for a second hand's job in the spinning room. He asked that we contact the other mills in the organization to see if they had such a man available.

If you know of a man who could fill this opening; would you please contact Mr. Arrowood at your earliest opportunity?

Thank you very much.

WMT/cm

General Counsel Exhibit M-30

July 3. 1956

Mr. Charles Johnson
W. A. Goodwin
List 169

Noted in your list sent out on 6/27/56 a J. R. Pruitt now employed at Woodside mills. We would be interested in this man for a 3rd shift supervisors position which would cover the entire mill and report directly to me. I would like to talk with this man and would pay his expenses to the mill. Would you make the arrangements and notify me if and when he would visit Darlington.

General Counsel Exhibit M-31

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, S. C.

April 5, 1956

To: Mr. E. O. DeFore
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. W. A. L. Sibley
Mr. M. C. Stone

From: C. G. Johnson

Subject: Cooperative Training

January 19, 1956 we sent you a letter briefly describing West Point's cooperative training program. Included were some suggestions that could be followed by the mills in our group to interest capable men presently in high school in the textile industry.

We are unable to locate a copy of your reply to our request for your comments on the suggestions we made. Will you please have your secretary send us a copy as we wish to summarize your comments and suggestions.

CGJ/cm

General Counsel Exhibit M-33

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, S. C.

April 3, 1956

To: Mr. D. R. Arrowood
Mr. C. E. Anderson
Mr. D. I. Beal
Mr. Phillips Byfield
Mr. S. J. Craig, Jr.
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. W. A. Goodwin
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. William Moore
Mr. A. G. New
Mr. W. A. Newton
Mr. T. E. Peden
Mr. H. L. Pratt, Jr.
Mr. George Rankin
Mr. H. B. Risher
Mr. A. W. Stoudemire
Mr. F. A. Thompson
Mr. W. E. Thrailkill
Mr. A. C. Wiesner
Mr. M. G. Wallace

CC: Mr. George Asnip
Mr. J. M. Bailey
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone

FROM: C. G. Johnson

SUBJECT: Employee Data

General Counsel Exhibit M-33

We have been asked to make a survey to compare certain information about employees in all our mills with similar data re employees in other industries. Will you please have someone fill in the information requested on the attached sheet and return one copy to the Placement Office at your earliest convenience? If possible, please base the length of service data on the roll for "vacation pay", as of March 31, 1956. If some other basis is used, please give date.

C G JOHNSON

CGJ/cm

General Counsel Exhibit M-34

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, S. C.

July 3, 1956

To: Mr. George Asnip
Mr. J. M. Bailey
Mr. Russell Bush
Mr. E. O. DeFore
Mr. Harry Defore
Mr. K. M. Lowry
Mr. J. A. Meehan
Mr. Roger Milliken
Mr. M. K. Milliken
Mr. R. B. Newton
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone

CC: Mr. E. G. Allee
Mr. C. E. Anderson
Mr. S. J. Craig, Jr.
Mr. I. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. R. C. Owings
Mr. T. E. Peden
Mr. H. L. Pratt, Jr.
Mr. H. B. Risher
Mr. I. B. Roberts
Mr. F. A. Thompson
Mr. M. G. Wallace

FROM: C. G. Johnson

SUBJECT: Income of Deering Milliken College Trainees vs. Engineers in Industry

The attached chart shows, as of 1954, the average annual income of our college trainees versus that of engineers in industry for those men employed from 1946 through 1953, inclusive.

The income data for engineers were secured from "Income and Salary Survey", published by the National Society of Professional Engineers. The data were based

on 14,328 valid replies which represents 42% of the society's membership. There was some misunderstanding re the questionnaire specifying 1954 as the year employed, so these data were eliminated from their survey and were not available for comparison.

CGJ/cm

The following tabulation is quite interesting:

Year Employed	Deering Milliken Average Income	Engineers Median Income	Variation from Deering Milliken	Engineers Upper Quartile Income	Variation From D. H.
1953	$4,342	$4,990	$ +648	$6,250	$+1,908
1952	4,986	5,310	+324	5,910	+ 924
1951	5,603	5,560	— 43	6,280	+ 677
1950	5,551	5,860	+309	6,780	+1,229
1949	7,338	6,330	—1,008	7,140	— 198
1948	8,426	6,730	—1,696	7,770	— 656
1947	8,337	7,040	—1,297	8,330	— 7
1946	9,560	7,310	—2,250	8,850	— 710
		NET:	$—5,013		$+3,167

Over the eight year period, the average income of a college trainee in our organization is $5,013 greater than that of the average engineer. Over the same period, the upper 25% of the engineers earn only $3,167 more than our average. By interpolation of these figures, our upper 25% would earn $5,848 more than the upper 25% of the engineers over the eight year period.

The Engineers' Joint Council plans to make another survey of the incomes of engineers during 1956. Between the E.J.C. and the N.S.P.E. surveys, we will be able to keep the above chart up-to-date.

Respondents' Exhibit M-2

Deering Milliken Service Corporation
Placement Department
P. O. Box 2000
Greenville, S. C.

June 12, 1956

To: All Personnel Managers

FROM: C. G. Johnson

SUBJECT: J. R. T. Institute

One of the mills is interested in sending a man to a J. R. T. Institute so he may become qualified to hold J. R. T. sessions. So far as we can find out, T. W. I. has gone out of business. Mr. Lamar Partain, formerly associated with T. W. I., is in the hardware business in Greenville and can hold institutes in J. I. T., J. R. T. and J. M. T. at certain times.

An institute is put on during one week and lasts 40 hours, five days, eight hours per day. A maximum of ten participants may take an institute. The cost of an institute is $2500.00. This includes all manuals and cards as well as a quality control check on each participant as he is holding a session.

Should you wish to have someone from your mill participate in a J. R. T. Institute, please advise me so one can be arranged. Those indicating interest will be advised if the response is not sufficient to justify it.

Mr. Partain will put on J. R. T. sessions at a cost of $25.00 per man for the ten hour course and J. I. T. and J. M. T. sessions at a cost of $35.00 per man. These sessions are limited to ten people per group.

CGJ.

C.G.J.

General Counsel Exhibit N-1

(Quoted from the S. C. State Chamber of Commerce "Newsletter" October, 1956)

"The President of Monument Mills, Inc. at Housatonic, Massachusetts notified the mill's 300 employees last week that the plant would be closed permanently the first week in November. The notice stated that since signing a labor contract last February, the union had kept the mill in a state of turmoil and reduced efficiency and production to the point that the owners were convinced the Mill had no future and investment of further funds were not justified. Monument was at one time the second largest producer of bedspreads in the world and, as recently as five years ago, had a payroll of over 1,000 employees."

General Counsel Exhibit N-3

DATE: February 23, 1955 Mr. Winston Garth

TO:
Mr. George Asnip
Mr. J. M. Bailey
Mr. George Baker
Mr. Marion Beacham
Mr. D. I. Beal
Mr. R. Brandt, Jr.
Mr. S. J. Craig
Mr. E. DeFore
Mr. R. C. Edwards
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. E. H. Hines, Jr.
Mr. C. T. Holland
Mr. W. S. Manning
Mr. Jos. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill

FROM: Roger Milliken

* * *

In this connection, I would like to suggest that you order from the Textile Information Service through the ACMI Charlotte office copies of a booklet that they have prepared called, "Danger Ahead for Your Job." This booklet is extremely well prepared, and I would like to suggest that you distribute one to every employee. This whole situation is a matter of life and death to our industry, and I hope that all of you can be as successful as Garland Simmons was in getting your employees in behind a letter writing program to the Senate. A thousand letters were written from Drayton to Congress.

cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud

General Counsel Exhibit 5

DATE: March 1, 1955

TO: Mr. K. M. Lowry

FROM: Roger Milliken

At the trustees meeting at Charlottesville it was decided that this summer instead of having a giant comparative processing test that students would be asked to do work on a special theses projects in the member mills. It was felt that by bringing these theses projects to a conclusion and by testing them out in actual production, a great deal of benefit would ensue.

It is the plan that the Institute will make up a list of the projects to be worked on and will advise the mills, who can then indicate whether they are interested and willing to have the students work in their mill on these projects at the mill's expense, it being understood that the information gathered would be available to all of the membership. The students working on these projects would be first year students and those who are preparing to enter the Institute.

It is my hope that it will be possible for us to have a great many of these studies made in our mills because while it is true whatever is found out will be made available to the membership at large, it is my thinking that we will benefit greatly by having the tests made in our mills and it will also give us an opportunity to evaluate the capabilities of the individual students and an opportunity to get to know better those whom we will want to subsequently hire upon graduation.

I am writing this letter to ask you if you will be the liaison between the Institute and our mills to make certain

that we get as many of these projects assigned to our group as possible.

cc: Mr. Randolph Brandt, Jr.
Mr. Harry Defore
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

General Counsel Exhibit 6

DATE: August 27, 1955

TO: Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. H. C. Byrd
Mr. H. Defore
Mr. R. B. Newton
Mr. S. L. Smith

FROM: Roger Milliken

Ken Lowry has set up a three-day meeting with the heads of the Industrial Engineering departments of the technical colleges in the South for October 10, 11, and 12, when he is explaining our business to them with the hopes that they will be more inclined to recommend to their best engineering students that they come into the textile industry rather than going into electronics or aviation.

The itinerary calls for their being in Spartanburg the night of the 11th, and as this is the time that we will be having our next meeting, I thought it would be an excellent idea if we could all have dinner together, and if you could arrange it, I would appreciate your planning to be with us at 6:30 p.m. at the Piedmont Club.

General Counsel Exhibit 7

DATE: January 27. 1955

TO: Mr. Randolph Brandt, Jr.
Mr. Ernest DeFore
Mr. R. C. Edwards
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. Alan B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud

FROM: Roger Milliken

Could you please send to me with a copy to Mr. Minot Milliken a dollar figure showing the amount of capital equipment that has been received since the beginning of the current fiscal year, or is currently on order, or for which you know orders will be placed within the next 3 months.

cc: Mr. Minot K. Milliken

R. M.
e.

General Counsel Exhibit 8

DATE: April 3, 1965
(Dictated April 2nd)

To: Mr. J. M. Bailey
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone

FROM: Roger Milliken

Now that the plans for capital expenditures for the year are fairly well formalized, could you please write me a letter advising me what these will amount to for the current fiscal year and how this compares with the amount of depreciation you will be setting up (including the half year's depreciation on these new items).

JMD

General Counsel Exhibit 8

If you will have any commitments which will not have been installed by the November 30th date, could you please add these as open commitments at year end in this report which you will be returning.

cc: Mr. Minot K. Milliken

General Counsel's Exhibit N-9

April 12, 1956

Mr. Roger Milliken
234 S. Fairview Ave.,
Spartanburg, S. C.

Dear Mr. Milliken:

In your letter of April 3rd you requested that we advise you as to the amount of depreciation that we are accruing as compared to the amount necessary this year with one-half year's depreciation on all new equipment. We are enclosing a list of equipment we have bought or are planning to buy and capitalize. Of this amount you will note that we have paid $43,231.90. The total amount we are anticipating capitalizing is $462,822.77. You will further note that we have listed the spinning frames as not coming in this year. I am hoping that we will get to purchase them in this year and get them installed but since they fit in with other questions of card room production we are not sure we can make them this year.

You will note that the half year depreciation on the 1956 additions amounts to $40,762.79. This added to our usual depreciation will amount to $195,036.59. We will plan to accrue this much.

Very truly yours,

J. M. Oeland
Treasurer

General Counsel's Exhibit N-10

DATE: March 1, 1955

FROM: Roger Milliken

In the immediate future we are planning to install a great deal of Pneumafil type equipment, and in discussing this with one of our treasurers the other day, he pointed out that he believed that we would be wise to plan to install that system which provides waste collection at each individual frame rather than at a central spot, his thinking being that it would be easier to control the amount of waste made if the mill has a per-frame check rather than just a central check on the amount of the waste.

It is my understanding that this can be accomplished with a central station control of the air if that is desired to tie in with your present air conditioning equipment.

General Counsel Exhibit N-11

DATE: December 12, 1955

TO: Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

FROM: Roger Milliken

The requests for capital expenditures show that it is possible to make a very good return on the installation of 40" section beams and automatic beam handling equipment, and I am therefore writing this letter to ask you if you would please make a study of what the return would be on such an expenditure.

Could you please all have this in my hands by February first, and then we will review the situation for the whole organization and see whether we cannot work out a very advantageous price with some supplier of this equipment and thus make the returns better than they otherwise would be.

Please send a copy of your report to Ken Lowry's department so that he can consolidate this information.

cc:
Mr. Hal C. Byrd
Mr. K. M. Lowry

General Counsel Exhibit 13

DATE: January 17, 1955
(Dictated January 14th)

TO: Mr. George Asnip
Mr. J. M. Bailey
Mr. George Baker
Mr. Marion Beacham
Mr. D. I. Beal
Mr. S. J. Craig
Mr. W. E. Dunn
Mr. E. DeFore
Mr. J. A. Ferguson
Mr. L. J. Fisher
Mr. Winston Garth
Mr. W. Basil Hill
Mr. E. H. Hines, Jr.
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. Jos. A. Meehan
Mr. E. P. Mullendore
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill

FROM: Roger Milliken

As a result of the very excellent meeting that was held at Gaffney yesterday, it was decided by the treasurers that we would ask Mr. Norton to be host to two meetings which would be held on the same day at Gaffney. One of these meetings would be for all the master mechanics and plant engineers from all plants. At this meeting Mr. Cook, who is in charge of this activity at Gaffney, would make a detailed presentation of the things they had been doing at Gaffney. All who were present at the meeting yesterday know what a fine accomplishment they have had in this department.

The second meeting will be a discussion of opening, picking, carding, drawing, and roving, at which meeting Mr. Holland, the overseer of these activities at Gaffney, will make in detail the presentation on what Gaffney has

done in these departments. This also will be a very stimulating meeting for all card room overseers in the organization who will be invited to attend this meeting.

Mr. Norton will be advising you of the dates of these meetings. It was suggested that they be held on the same day to simplify traveling arrangements for those who are attending from mills that are not right next to Gaffney.

cc: Mr. R. Brandt, Jr.
Mr. R. C. Edwards
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud

General Counsel Exhibit 14

DATE: January 21, 1955

To: Mr. George Asnip
Mr. J. M. Bailey
Mr. George Baker
Mr. Marion Beacham
Mr. D. I. Beal
Mr. S. J. Craig
Mr. E. DeFore
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. W. Basil Hill
Mr. E. H. Hines, Jr.
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. Jos. A. Meehan
Mr. E. P. Mullendore
Mr. H. L. Pratt
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill

FROM: Roger Milliken

Contrary to the earlier letter I wrote, we want to schedule the meeting at which we will hear reports on the recommended procedures in opening and picking, carding, drawing, roving, warp preparation and weaving on the 16th instead of the 17th of February.

* * *

As you know, we have asked each mill making a presentation to schedule it for 30 minutes, leaving a 30-minute period for questions and answers. I have already heard one of these presentations, and I am sure that this is going to be one of the most worthwhile meetings that we have ever had.

In order that this meeting may get along, it has been decided to start it at 8:30 a.m. in the conference room at Drayton.

General Counsel Exhibit 15

DATE: February 22, 1955

TO: Mr. Randolph Brandt, Jr.
Mr. Ernest DeFore
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud
Mr. Hal C. Byrd
Mr. Harry Defore
Mr. K. M. Lowry
Mr. R. McCullough
Mr. R. B. Newton
Mr. S. L. Smith
Mr. T. D. Truluck

FROM: Roger Milliken

At our meeting last Thursday we discussed a great many items and each of you agreed to undertake certain projects at this meeting. I am very anxious to see us pursue these projects to a successful conclusion and therefore would appreciate it if you could drop me a line outlining the projects that you undertook to take on so that I could consolidate this information and make it available to all of those who attended this meeting and so that we may have an agenda to work from at our next meeting.

General Counsel Exhibit N-16

DATE: April 6, 1955

TO: Mr. George Asnip	Mr. Winston Garth
Mr. J. M. Bailey	Mr. E. H. Hines, Jr.
Mr. George Baker	Mr. C. T. Holland
Mr. Marion Beacham	Mr. W. S. Manning
Mr. D. I. Beal	Mr. J. A. Meehan
Mr. Randolph Brandt, Jr.	Mr. J. J. Norton, Jr.
Mr. S. J. Craig	Mr. J. M. Oeland
Mr. E. DeFore	Mr. I. S. Pitts, Jr.
Mr. R. C. Edwards	Mr. H. L. Pratt
Mr. J. A. Ferguson	Mr. G. G. Simmons
Mr. L. J. Fisher, Jr.	Mr. F. A. Thompson
Mr. L. C. Ellis	Mr. W. E. Thrailkill

FROM: Roger Milliken

I have a feeling that we did not sufficiently tie up the benefits to be gotten from the meeting held the beginning of March wherein several mills presented their recommendations on opening and picking, carding, drawing, roving, spinning, spooling and warping, and slashing.

It was my hope that after this meeting each mill would take back the printed reports that had been made up in preparation for this meeting and would have their overseers read this report and come back with recommendations as to which of the items recommended had application in their mill and should be adopted.

General Counsel Exhibit N-16

I would be very interested in having you write me what you did with your organization as a result of this meeting and then I will plan to pass on to the rest of the organization a collection of the most significant results that came from this meeting.

Could I please have a letter from you about this.

cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. G. Stone
Mr. W. B. D. Stroud

General Counsel Exhibit N-17

DATE: April 6, 1955

TO:

Mr. George Asnip	Mr. Winston Garth
Mr. J. M. Bailey	Mr. E. H. Hines, Jr.
Mr. George Baker	Mr. C. T. Holland
Mr. Marion Beacham	Mr. W. S. Manning
Mr. D. I. Beal	Mr. Jos. A. Meehan
Mr. Randolph Brandt, Jr.	Mr. J. J. Norton, Jr.
Mr. S. J. Craig, Jr.	Mr. J. M. Oeland
Mr. Ernest DeFore	Mr. I. S. Pitts, Jr.
Mr. R. C. Edwards	Mr. H. L. Pratt
Mr. L. C. Ellis	Mr. G. G. Simmons
Mr. J. A. Ferguson	Mr. F. A. Thompson
Mr. L. J. Fisher	Mr. W. E. Thrailkill

FROM: Roger Milliken

I think you will be interested in reading these excerpts from the report from Gainesville Mill for the last month, particularly their reference to what they have done and are doing as a result of the meeting which the synthetic group put on for us last month.

cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud

General Counsel Exhibit N-17

Excerpts from Gainesville Report

"On March 8, 1955 we were privileged to attend the meeting at Judson. At this meeting the synthetic group presented some startling facts. Granted that real progress has been made by the synthetic mills, the importance of the meeting to us was the method used to make these accomplishments possible.

"On the morning of March 9th we discussed briefly some of the results with our supervisors, and more fully with them how these things had been accomplished. We asked that they go along with us on an experiment. A meeting was set for March 15th and each supervisor was asked to bring to that meeting three ideas on how he could reduce costs in his department.

"We had been working with our weave room overseer in an effort to reduce the labor complement in one of his departments, the standards department had also worked on this project, and the conclusion had been reached that very little could be done in that particular weave room to reduce the costs. After our meeting of March 15th, this overseer came into our office and said that "after thinking it over I believe that if the warp man could be trained to smash, then three smash hands could be eliminated from that department." At the present time the warp men are being trained for this job.

"The cloth room overseer presented an outline to eliminate one shift of the cloth room operation. Under his plan, the second hand will be used as a second hand, where in the past he has been little more than a checker. The department will have a full time fixer and all of this will be accomplished with a saving of $7.592.00 a year. The cloth room

overseer further states, "I do not think I will have to let anyone go because vacations and normal turnover will take care of them."

"We had a second meeting on March 23rd, and a summary of the potential savings suggested by the overseers present at that meeting totalled slightly over $50,000.00 per year. This program is something that we have been endeavoring to do for a long time and we are grateful to the synthetic group for having shown us how to set about it. We have made a start and believe that although our showing will not be as startling as that made by the synthetic mills, we definitely have an opportunity ahead of us.

"D. M. Research Corporation completed an inspection of our cards and rated us at 104 demerits per card. Also during the period they inspected our roving frames and rated us at 1.1 demerits per spindle. We were trying to get under 1 demerit per sindle and now hear that Gaffney was rated at 1.0 demerits per spindle. We are beginning to feel that they are the "Test line mill."

In addition to the maintenance team in the spinning room, we have set up a system for section men so that low demerits per spindle may be maintained. Under this system each section man inspects and corrects 3 frames per week. This will mean that on our third floor spinning room all frames will be covered once per 6 weeks and on the fifth floor, once each 8 weeks. This new method will be most beneficial.

"During the period our maintenance team completed 14 frames.

"A partition has been installed between the 2 warpers in the spooler room. This partition reaches from the ceiling downward and a curtain is lowered from the partition to the

floor when one warper is being blown off. This prevents lint from being blown into the yarn being run on the other warper and will aid us in quality improvement.

"The weave room overseer states in his report that he is planning meetings with his second hands similar to the meetings already described with the overseers. We are encouraging each overseer to carry this thinking through the entire organization. As Frank Haddon says, in doing this the overseer is having to analyze his department closer than he has ever done before. "They are having to think positively about how to make something work rather than why it won't work."

"Stowe-Woodward squeeze rolls were installed on slasher #5. These rubber rolls have been in operation since March 7th and are apparently doing a good job. The total weight on these rolls is approximately 1,110 pounds. A considerable saving can be realized through the use of these rolls and the elimination of woolen blankets, so we are watching their operation very closely.

"In the February report we reviewed our experiments preparatory to the installation of 30 cards in the card room. These experiments are continuing and we now expect to absorb these 30 cards with no additional operating costs in card room personnel. We will probably run laps between 56 and 60 pounds. This lap will be run with approximately 3,000 pounds pressure on the stack rolls and 70 pounds pressure on the pneumatic rack. This arrangement produces a lap small enough to be easily handled and a well felted lap. We expect to reduce our carding rate from 9.68 to 8.6 pounds per hour, 100%.

"We expect to assign 10 additional cards to the card tenders and 30 additional cards to the card stripper, all frequencies of stripping to remain the same. Probably it will

be necessary to add some of the stripping duties, such as cleaning stripper tanks, to those of the general cleaner. The overseer has come up with this arrangement, which we believe to be satisfactory.

"The weave room overseer is continuing to work toward reduced humidity in the weave rooms. At present he is rearranging humidifier heads in #2 weave room, with 2 lines now completed. He reports that he expects to bring the humidity down about 6% in this rom which will mean to approximately 80% R.H. In #1 weave room he has installed electronic control elements in the Minneapolis-Honeywell boxes which control at 82% R.H., plus or minus three.

"In #4 weave room where our main effort has been directed, we are now running at 75% relative humidity.

"The Duro-Test fluorescent tubes which we had on order have been received and installed at the inspection frame and folder in the cloth room. We are using the turquoise color and believe that it is a much improved light for inspection of greige goods. Although these tubes cost $1.36 each, the claim is that they will last approximately 30% longer than the plain tube. Probably we will equip our inspection frames and folders with these tubes.

"At the suggestion of Mr. Truluck, we are sampling each bale of cotton before it is put into our mix. The cotton department checks the grade, staple, micronaire and tensile on each day's mix and attempts to report back to us their findings before these bales go into our process.

"At the present time we are accumulating data and will attempt to correlate performance throughout the entire preparation with this data. It is our plan to be able to cull from a mix any bale which we may be able to designate as sub-standard when these standards are determined.

"At the present we have found only one bale which varied from its original classification of spinability. Per-

haps the main advantage of this test will be the correlation between spinning room performance and cotton opened, if this can be determined.

"In the last four weeks we used a total of 281 shuttles. This gave us the best average loom hours per shuttle that we have ever had, of 3.467.

"Sometime ago we reported the method used in correcting and maintaining our moist-o-graph Brown instruments. We have received a report on these instruments specifically calling our attention to the rectifier. It has been found that the average operating life of the 5Y3-GT tube is approximately 2 to 3 months. By changing this tube to a 5U4-G the effective life can be doubled or trebled. This is a small cost saving insofar as parts are concerned, but we expect less trouble with our instruments, more constant control and, therefore, better warps. We have a regular inspection report on these machines which we feel confident would be of value to anyone caring to adopt its use.

"It is interesting to read from the card room overseer's report that in overhauling the drawing frames the man hours required on this cycle are only half those required previously and that the parts needing replacement are at a bare minimum. It is the card room overseer's plan to continue overhauling on the same cycle in order to maintain quality production even though very little, normally, will be found to do. Card room efficiency has increased and last week stood at 83.6%.

"We have received and are now using our small Tennant sanding machine. This allows us to get into alleys and spaces that we could not get to with our 12 inch machine. The floor maintenance program is moving along steadily and before too long our floors will show much improvement."

General Counsel Exhibit No. 18

DATE: April 30, 1955

TO:	Mr. George Asnip	Mr. Winston Garth
	Mr. J. M. Bailey	Mr. C. T. Holland
	Mr. George Baker	Mr. W. S. Manning
	Mr. Marion Beacham	Mr. Jos. A. Meehan
	Mr. D. I. Beal	Mr. J. J. Norton, Jr.
	Mr. Randolph Brandt, Jr.	Mr. J. M. Oeland
	Mr. S. J. Craig, Jr.	Mr. T. E. Peden
	Mr. Ernest DeFore	Mr. I. S. Pitts, Jr.
	Mr. R. C. Edwards	Mr. H. L. Pratt
	Mr. L. C. Ellis	Mr. G. G. Simmons
	Mr. J. A. Ferguson	Mr. F. A. Thompson
	Mr. L. J. Fisher, Jr.	Mr. W. E. Thrailkill

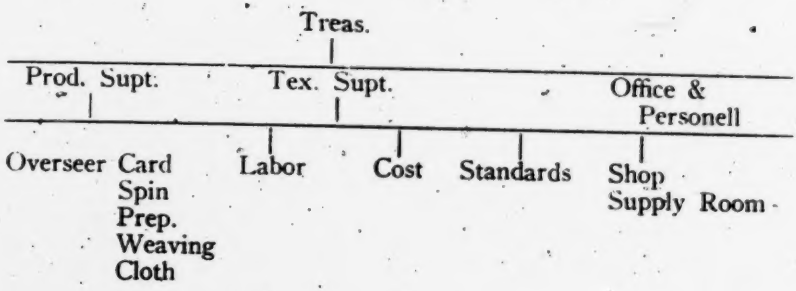
FROM: Roger Milliken

In attending mill achievement meetings in the past couple months, I have noticed that there are a great many different type of organizational setups in each of the mills, and I think some benefit can come from comparing the organization charts from our different operations.

Therefore I am writing this letter to ask you if you would please send to me your organizational setup. It will not be necessary for you to insert names into this chart, but merely to send the chart itself with the description of the title. Please do not take this chart down below the level of overseer.

General Counsel Exhibit N-17

[HANDWRITTEN]



cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud

General Counsel Exhibit 19

DATE: April 30, 1955

TO: Mr. K. M. Lowry and Mr. R. B. Newton

FROM: Roger Milliken

All of the mills in Deering Milliken have made tremendous strides in the recent past on improving the quality, cost, and machinery maintenance in their yarn making departments. A large part of this progress has been caused by the great attention that has been focused on these problems at the meetings that we have had. Now that we have made these improvements in our yarn, it seems to me that an equally strong emphasis should be put on the weaving operation as to quality, efficiency, cost, loom maintenance, etc.

It seems to me that we are ready for an attack on these problems, and I am writing this letter to ask you to write to the treasurers and to me your recommendation as to how we can best start on such a program and what the full program should be.

cc: Mr. Randolph Brandt, Jr.
Mr. Ernest DeFore
Mr. R. C. Edwards
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. Marshall C. Stone
Mr. W. B. D. Stroud

General Counsel Exhibit 20

DATE: April 30, 1955

TO: Mr. S. L. Smith

FROM: Roger Milliken

I think that we are probably far away from using the best modern practices of production control known to American industry in all of our mills, and I am writing this letter to ask you if you will please plan a meeting, and work it out with all treasurers who have production control problems to have their personnel attend a meeting, to discuss in a way you think best how our organization can adopt the most efficient and inexpensive plans of production control. It may be that such a meeting would take 2 or 3 days.

After you have had a chance to study this proposal, would you please write to me and to the treasurers your thoughts as to how best to carry out this idea.

cc: Mr. Randolph Brandt, Jr.
Mr. Ernest DeFore
Mr. R. C. Edwards
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. Alan B. Sibley
Mr. W. A. L. Sibley
Mr. Marshall C. Stone
Mr. W. B. D. Stroud

General Counsel Exhibit N-21

DATE: April 30, 1955

To: Mr. Russell B. Newton

FROM: Roger Milliken

The most outstanding development at the Gainesville meeting was the node spinning ring that has been tried out at Gainesville and promises to give us substantial improvements in spinning speeds. It was decided at this meeting that each mill would immediately proceed with the installation of at least one frame of node rings which they would make in their own shops. We are doing this because we do not under the circumstances want to enlist an outside supplier to make these rings because it is not possible to patent this idea and we want to keep our competition out of it as long as possible.

Obviously there are going to be different designs developed by each mill, and I think it is extremely important that each mill have the benefit of the other mills' ideas, and so at the meeting I asked Frank Rowe if he would discuss with you how the Research Corporation could coordinate this program and be of the most help in getting it advanced at the fastest possible speed in all mills.

Because of the fact that this has worked successfully at Gainesville and also at Farnsworth where they have been using it for some time, it looks like it is something that could be adopted very, very fast by our organization, and

General Counsel Exhibit N-21

I hope that it will be possible for you to put a great deal of push behind it.

cc: Mr. George Asnip
Mr. J. M. Bailey
Mr. George Baker
Mr. Marion Beacham
Mr. D. I. Beal
Mr. Randolph Brandt, Jr.
Mr. S. J. Craig, Jr.
Mr. Ernest DeFore
Mr. R. C. Edwards
Mr. L. C. Ellie
Mr. J. A. Ferguson
Mr. L. J. Fisher
Mr. Winston Garth
Mr. C. T. Holland
Mr. W. S. Manning
Mr. Jos. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. T. E. Peden
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone
Mr. W. B. D. Stroud
Mr. F. A. Thompson
Mr. W. E. Thrailkill

General Counsel Exhibit N-22

DATE: May 27, 1955

TO: Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley

FROM: Roger Milliken

The Institute of Textile Technology is planning to have a meeting in July at Atlanta, Clemson, and Charlotte to bring to the membership the results of the studies that they have made in the past year. They were going to have the meeting at Clemson on Wednesday with a meeting at Georgia Tech on Friday, and I had been hoping that we could work it out so that we could have a special meeting for Deering Milliken personnel alone on the intervening day, Thursday, so that our men could feel free to ask questions without divulging which way our interests may lie.

In trying to line this up with Toby Hance, he runs up against the problem that if he were to work out such a meeting for our group, he would be in a position where he would have to do the same for a lot of other groups which would be difficult for them to accomplish. He has written to me asking whether it wouldn't work out just as well for our mills to attend the regular meeting and then perhaps stay on over and all have dinner together at Clemson in a group and perhaps have an hour's session for questions and answers after the main meeting had adjourned.

I would appreciate it very much if you could let me have your thoughts on this. Actually this year the presenta-

tion will be devoted exclusively to the studies that the Institute has made into the fields of cotton yarn processing from opening through spinning and there will be no discussions on a lot of the research that they are going into on cyanoethylation and other fields which will not be of interest to mill overseers and assistant superintendents who will make up the large body of those attending these meetings.

Looking forward to hearing from you.

General Counsel Exhibit N-23

May 30, 1955

Mr. Roger Milliken
234 S. Fairview Ave.,
Spartanburg, S. C.

Dear Mr. Milliken:

We have your letter regarding plans you are trying to complete on having a group from the D. M. mills meet with a group from I. T. T. to discuss questions we might have regarding the work of the Institute. We will be glad here at Darlington to work with you along any lines you suggest. We did attend this meeting last year at Charlotte in order to save time and mileage, and will make our plans to be at Clemson.

Very truly yours,

J. M. Oeland
Treasurer

General Counsel Exhibit N-24

DATE: August 25, 1955

TO: Mr. R. H. Bush
Mr. H. C. Byrd
Mr. Harry Defore
Mr. K. M. Lowry
Mr. R. B. Newton
Mr. S. L. Smith
Mr. T. D. Truluck

FROM: Roger Milliken

At our wage discussion Tuesday it was brought out again that Springs was running at a higher front roll speed with less ends down than were our mills, and this brings up the point that we ought to have before us goals for each of the mills in the organization and target dates when these goals will be accomplished. It seems to me that the setting up of these goals and target dates is a proper discussion for our next treasurers meeting for which I would like to set the date of Tuesday, October 11th, at Drayton at 9 o'clock.

I am writing to ask you if you will please be prepared to present at that meeting what you think the specific goals of each mill should be and your specific recommendations as to how these goals may be accomplished. For us to get the most out of this meeting it is imperative, as stated above, that these goals be very specific and likewise your recommendations as to the methods by which they may be attained.

It is my hope that it may be possible for you to have an opportunity to talk over these goals with the mill treasurers prior to the meeting so that we will not be wasting too much time when we are all together but will spend most of our

time outlining what has been agreed upon and the date when the goals may be achieved.

cc: Mr. E. O. DeFore
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
✓ Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

General Counsel Exhibit N-25

DATE: December 12, 1955

TO: Mr. E. O. DeFore
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

cc: Mr. Russell Bush
Mr. Hal C. Byrd
Mr. Harry Defore
Mr. K. M. Lowry
Mr. R. B. Newton
Mr. S. L. Smith
Mr. T. D. Truluck

FROM: Roger Milliken

At our last big meeting in October you will remember that the main subject discussed was the establishment of goals for the improvement of quality, speeds, and efficiency and the reduction of costs. At that time it was decided that we would meet again in January to hear a report from each and every mill on the progress they had made against their planned goals. In trying to set up a date, I find that there isn't one in January that is convenient to everybody and therefore we have settled on Monday, February 6th at 9 o'clock in the morning, at Drayton as the time and place for the next meeting.

In thinking about the best method in presenting this information, it seems that we would be well advised if each mill would use charts to report on their progress. Having had some experience with charts at sales meetings in New York, it appears that the most effective presentation can be made and the most time saved if the charts are all made the same way so that it isn't necessary for the listeners to orient themselves every time a new chart goes up. To this end I have talked with Alan Sibley and he has offered to work out the best form with Ken Lowry, and then if you will plan to get in touch with Ken Lowry he will pass this information on to you so that we can all be reporting together.

General Counsel Exhibit N-25

Because each mill will be making a report it will be necessary to confine each presentation to not more than 10 minutes, and in this connection we will ask somebody to ring a bell at the end of 10 minutes so that it will be impossible for anybody to go over his allotted time.

The points that should be covered in the presentation by each mill would seem to be the following:

1. Progress on expense reduction (this would report the full goal saving as reported in October; how much it was planned to take out by the January meeting and how much was taken out; and what the plan is for reduction in the next 3-month period.)
2. The number of jobs on the payroll in October; in January; and projected to April; and the number of persons on the payroll in October, January, and April.
3. A discussion of other goals and progress towards them such as spinning speeds, loom speeds, etc.
4. Report on the mill standing by the mill's demerits by department in machinery inspection reports and their relative standing.
5. The mill's percentage of total waste and their standing on waste.
6. The number of hours worked without a lost time accident.
7. The status of a preventative maintenance setup in each department.
8. A report on any improvements and new machinery improvements which have been helpful and could be helpful to others.

General Counsel Exhibit N-25

9. What has been done to improve local public relations.
10. What do you want from the Service Departments.

This seems like a lot of information to cover in 10 minutes, but from talking with Alan, I think it is going to be possible for us to get about 50 per cent of this information onto a chart which will make it possible to cover that amount in a very short time and leave the balance of the time for covering the other subjects.

General Counsel Exhibit N-26

DATE: December 17, 1955

TO: Mr. A. J. May

FROM: Roger Milliken

Every quarter from now on we are planning to hold a meeting of all of our mills at which each one of them will make a presentation to the group of what they have accomplished in the way of cost improvement, increased efficiencies, etc., during the previous 3 months. The first of these meetings is going to be held at Drayton at 9 o'clock Monday morning, February 6th.

I hope very much that you can work out your plans so that you can attend this meeting. So many of the policies of the whole company are developed at meetings like this that I think it would be extremely valuable if you could plan to be present and thus know of all the things that are being done to make the manufacturing of Deering Milliken as outstanding as possible. I also feel sure that by being present at these meetings you will think of things that we can all do that will further help to improve the company.

I am sorry that this meeting falls on a Monday, as it is not normally our practice to hold these meetings on that day, but this was the only time that everybody involved could get together without conflicting engagements. As it is, we have postponed the meeting by 2 weeks so as to include everybody.

cc: Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. W. A. L. Sibley

General Counsel Exhibit 27

DATE: April 3, 1956
(Dictated April 2nd)

TO: Mr. C. E. Anderson
Mr. George Asnip
Mr. J. M. Bailey
Mr. D. I. Beal
Mr. S. J. Craig, Jr.
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. J. A. Meehan
Mr. W. H. Moore
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. T. E. Peden
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. H. B. Risher
Mr. F. A. Thompson
Mr. W. E. Thrailkill
Mr. M. G. Wallace
Mr. G. G. Simmons

FROM: Roger Milliken

I have just read the minutes of the recent meeting on warp preparation which was held at Gaffney on the first of February, and I am writing to say that I hope that each mill that sends a person to these central meetings asks that person to make a written recommendation when he returns as to what your particular mill should do as a result of what he has learned at this meeting.

As I read through this report, it is evident that a great many different things are being done at the different mills, and I am urging that the above procedure (if you are not already using it) be followed in order to be sure that we don't lose all of the advantages that we can get out of such a meeting.

cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

General Counsel Exhibit N-28

DATE: May 22, 1956

TO:

Mr. C. E. Anderson	Mr. W. S. Manning
Mr. George Asnip	Mr. J. A. Meehan
Mr. J. M. Bailey	Mr. Wm. H. Moore,
Mr. D. I. Beal	Mr. J. J. Norton, Jr.
Mr. S. J. Craig, Jr.	Mr. J. M. Oeland
Mr. E. O. DeFore	Mr. T. E. Peden
Mr. R. C. Edwards	Mr. I. S. Pitts, Jr.
Mr. L. C. Ellis	Mr. H. L. Pratt
Mr. J. A. Ferguson	Mr. H. B. Risher
Mr. L. J. Fisher, Jr.	Mr. G. G. Simmons
Mr. Winston Garth	Mr. F. A. Thompson
Mr. C. T. Holland	Mr. W. E. Thrailkill
Mr. J. M. Jackson	Mr. M. G. Wallace

FROM: Roger Milliken

I have just been talking with Bill Sibley who has been developing, along with Harry Defore's department, a quality control program for his mills. As I believe you know, Harry Defore has been concentrating a lot of his time at Monarch to help get this program developed and the bugs ironed out so that it will be possible for other mills to adopt it rapidly. I am going to ask Bill Sibley to arrange for a description of this quality control program at our next Treasurers meeting, and I feel certain that all of you will be as enthusiastic about what it can do for us as you were about the Sterling Smith Cost System which Jack Fisher worked out at Gerrish Milliken.

To get such a program going in your mill will, of course, require personnel, and I am writing this letter at this time so that you may be laying the groundwork to see that you have personnel available to get such a program going, and beginning with the October meeting, Harry Defore will

make a report on the progress that each mill has made in setting up a qualified program.

cc: Mr. R. H. Bush
Mr. H. C. Byrd
Mr. Harry Defore
Mr. K. M. Lowry
Mr. R. B. Newton
Mr. Sterling L. Smith
Mr. T. D. Truluck
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

General Counsel Exhibit N-29

DATE: November 10, 1955

To: Mr. J. M. Oeland

FROM: Roger Milliken

I was looking over the safety contest figures for the last six months and was disappointed in Darlington's showing with eighteen lost time accidents. Actually this amounts to over 25 per cent of all the lost time accidents in the Deering Milliken group.

It makes me wonder whether you have a sufficiently well organized safety campaign, and if not, I hope that with your new setup you will have an opportunity to do this so that you may be among the leaders in the future.

General Counsel Exhibit N-30

DATE: May 16, 1955
(Dictated May 14th)

TO: Mr. George Asnip
Mr. J. M. Bailey
Mr. George Baker
Mr. Marion Beacham
Mr. D. I. Beal
Mr. S. J. Craig, Jr.
Mr. Ernest DeFore
Mr. Randolph Brandt, Jr.
Mr. R. C. Edwards
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. C. T. Holland
Mr. W. S. Manning
Mr. Jos. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. T. E. Peden
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. H. Risher
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill

FROM: Roger Milliken

FLASH!!!

Monarch Mills, Monarch Plant, becomes the first cotton mill in the Deering Milliken organization to have all of their weave rooms running at 72 per cent relative humidity. Congratulations Lewis Ellis!

(An interesting by-product of the drives to reduce our humidities is the fact that one of the mills which is expanding their production capacity had thought that they would

need to buy a new air compressor, and after lowering their humidity in the weave rooms, this mill has found that they have excess compressor capacity and will not have to spend the extra money to buy another one.)

Air is a very expensive thing, and I think that in addition to giving us better weaving rooms, I think it will also give us reduced costs.

cc: Mr. H. C. Byrd
Mr. H. Defore
Mr. K. M. Lowry
Mr. R. B. Newton
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud

General Counsel Exhibit N-31

DATE: January 14, 1955

TO: Mr. R. B. Newton

FROM: Roger Milliken

Apropos of Mr. Roy Rochester's idea which may be patentable, I want to ask whether all mills have now adopted the policy of having all of their supervision sign a patent agreement with the company. This was put in the works some time ago, but I have not heard whether it was brought to a conclusion and I think it is in order to check and see whether the mills are following this procedure and are getting such agreements from all new personnel coming into management ranks.

Could you please check with all of the mill treasurers on this for me.

cc: Mr. Randolph Brandt, Jr.
Mr. Ernest DeFore
Mr. R. C. Edwards
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. Alan B. Sibley
Mr. W. A. L. Sibley
Mr. Marshall Stone
Mr. W. B. D. Stroud

General Counsel Exhibit N-32

DATE: February 22, 1955

TO: Mr. George Asnip
Mr. R. C. Edwards
Mr. J. M. Oeland
Mr. A. B. Sibley
Mr. W. B. D. Stroud

FROM: Roger Milliken

Dr. Armitage has received a letter from Basil Hill who is now associated with the Mooresville Mills. Hill was very interested in finding out whether they could become a licensee under the Research Corporation to use the slub inserter which we have had available for some time. He believes that apparently it holds terrific promise for Mooresville.

This enthusiasm on his part makes me wonder if we have done everything possible to exploit the possibilities of this development, and I am writing this letter to ask you again to think about it to see whether we could use it to advantage.

cc: Dr. N. C. Armitage

General Counsel Exhibit N-33

DATE: February 24, 1955

TO: Mr. George Asnip
Mr. J. M. Bailey
Mr. George Baker
Mr. Marion Beacham
Mr. S. J. Craig
Mr. E. DeFore
Mr. R. C. Edwards
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. E. H. Hines, Jr.
Mr. C. T. Holland
Mr. W. S. Manning
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill

FROM: Roger Milliken

From what I read in the paper, the problem of water conservation is going to become a matter of greater and greater importance each year and in talking with Russell Bush the other day, I asked him if he would talk with each of you as to ways and means of our getting our consumption of water measured so that it will be possible for each of you to work towards the reduction of your use of water.

I am writing this letter to ask you to please give some serious thought as to how you can measure your consumption and activate a program to reduce your consumption of water much as we now have programs to reduce our production of waste.

cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud

General Counsel Exhibit N-34

DATE: February 28, 1955

TO: Mr. T. D. Truluck

FROM: Roger Milliken

Dear Tru:

I was delighted to receive your recommendation on Friday as to your thinking on the best way to set up the operation so that it would be possible for us to have an independent agency to recommend the qualities desired in our cotton and to check to see that the cotton purchased lived up to the requirements as decided upon by the mill treasurer.

I just received your letter covering that which we discussed on Friday. There is just one thing in this letter which was not covered and which we discussed and which I wanted to be sure was understood, and that is that as we visualize it, it would be the function and responsibility of Harry Defore's group, working closely with you, to set up the requirements and control limits of each qualification that he believes will make for the best quality and the most efficient cost for the particular yarn a mill is making; that he will present these recommendations to the mill treasurer who will have to weigh how near it is practical to live up to these requirements taking into consideration the possible additional costs you would have to pay to get them.

It would then be the function of the treasurer to advise you what he wanted purchased, which orders you would then proceed to execute for him.

Following that, it would be the plan to set up a recheck wherein some kind of sampling arrangement would be made for the mill to send Harry Defore's department sufficient

samples for analyses so that he could see how the cotton delivered compared with the qualities purchased.

I was delighted that you and Harry plan to use all laboratories that will be involved in this operation jointly so that this new set up will involve a minimum of additional cost.

The whole organization is greatly indebted to you for having had the vision to bring our cotton purchasing up to its present state, which I believe has put us way in the forefront of the industry, and I think that this new recommendation will make it possible for us to proceed even further to everybody's benefit.

I was very glad to have been able to sit in on the meeting at which you addressed the A. M. C. buyers Friday, and I can now understand why all of our customers whom our salesmen have brought down have always considered their visit to your department one of the highlights of their visit South.

cc: Mr. Randolph Brandt, Jr.
Mr. Harry Defore
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

General Counsel Exhibit N-35

[Letterhead of]

DARLINGTON MANUFACTURING COMPANY
DARLINGTON, SOUTH CAROLINA

May 9, 1955

Mr. Roger Milliken
234 Fairview Avenue
Spartanburg, S. C.

Subject: Buying, Classing and Laboratory Offices for Cotton Department.

Dear Mr. Milliken:

I have given some thought to your suggestion that we write you about our recommendations for purchases of cotton this fall. I do not feel that I have come up with any solution to this problem that would be helpful. I do have a definite opinion in that we should make our plans flexible enough to take advantage of the opportunities that may be presented in the growing of each year's crop. For instance, here at Darlington in the last several years, we have experienced at least one year where we felt, everything considered, the eastern growth of cotton supplied our needs at a better price. On another year we purchased some beautiful cotton from the Rio Grande valley. Memphis Territory cotton has on the whole, except for this year, proved more or less satisfactory. We all agree that for certain running characteristics it is well for us to have a supply of California cotton. With the uncertainty of the weather and growing conditions for this year, I would rather hesitate to set up a fast rule that we

General Counsel Exhibit N-35

will buy only California cotton. With an outfit as big as Deering Milliken, if this information should get to the trade, it is my feeling that we would have to pay a premium for the California growth.

I would like to say that I feel that our present setup of having Harry DeFore analyze the running characteristics of the cotton we are purchasing has great possibilities for each of our mills. This is no reflection on what has happened in the past but rather that I feel we are moving into a new field of manufacturing and testing where Harry can guide us along the best paths for production and efficiency. I further feel that it is not without the realm of possibility that we can get cotton satisfactory for our running at a better basis if we will utilize to the fullest advantage the information and testing procedures that we presently have. As Mr. Truluck and Harry work together on this program I feel certain that many advantages will unfold for a closer cooperation between them and the mills in question.

As stated at the beginning of this letter, I do not feel that I have any helpful suggestions, but felt I would like to follow up on your suggestion that we write you our opinion with regard to this matter.

Yours very truly,

J. M. OELAND
J. M. Oeland
Treasurer

General Counsel Exhibit N-36

DATE: March 8, 1955

TO:

Mr. George Asnip	Mr. I. S. Pitts, Jr.
Mr. J. M. Bailey	Mr. A. B. Sibley
Mr. Randolph Brandt, Jr.	Mr. W. A. L. Sibley
Mr. J. J. Norton, Jr.	Mr. G. G. Simmons
✓ Mr. J. M. Oeland	Mr. M. C. Stone

FROM: Roger Milliken

I am sure that you have recently received a copy of Mr. Jackson's report to Mr. Norton on his trip to Springs Mill, where they went particularly to study their slashing operation. During their visit they found "All starch shipments were being checked for moisture, the allowable moisture in corn starch being 12 per cent. When the check was first started, it was found that some shipments had as low as 11 per cent and as high as 16 per cent and that now all shipments average just under 12 per cent. This saving in starch is the big saving they commented upon as having paid for the laboratory. The method of checking is to open 10 bags of starch per car, and from the center of each bag to take a small amount of starch, blending them all together and then checking the blend for moisture."

I am writing this letter to emphasize this paragraph and to wonder whether you are not going to want to set up a similar test to be sure that we are not paying the starch companies for water.

cc: Mr. Harry Defore
Mr. R. B. Newton

General Counsel Exhibit N-38

DATE: March 15, 1955

TO: Mr. Harry Defore
Mr. A. J. Dillard, Jr.
Mr. J. J. Norton, Jr.
✓ Mr. J. M. Oeland
Mr. W. A. L. Sibley
Mr. S. L. Smith
Mr. M. C. Stone

FROM: Roger Milliken

I was tremendously interested in Sterling Smith's report to Bill Sibley on the subject of the examination of 80x80 finished at Cranston from greige cloth made up of Monarch, Darlington, Borden, Durst, and Alice goods. The results are certainly startling and shows that there is a lot that it is important for us to learn if we are to make the goods that will make the finest finished piece of goods.

I am writing this letter to say that I hope that it will be possible to accelerate the making of further tests of this kind and the factual analysis of what accounts for the difference so that we may proceed to bring our goods up to the quality of our competitors.

General Counsel Exhibit N-39

DATE: March 15, 1955

TO:

Mr. George Asnip	Mr. Winston Garth
Mr. J. M. Bailey	Mr. E. H. Hines, Jr.
Mr. George Baker	Mr. C. T. Holland
Mr. Marion Beacham	Mr. W. S. Manning
Mr. D. I. Beal	Mr. Jos. A. Meehan
Mr. Randolph Brandt, Jr.	Mr. J. J. Norton, Jr.
Mr. S. J. Craig, Jr.	✓ Mr. J. M. Oeland
Mr. Ernest DeFore	Mr. I. S. Pitts, Jr.
Mr. R. C. Edwards	Mr. H. L. Pratt
Mr. L. C. Ellis	Mr. G. G. Simmons
Mr. J. A. Ferguson	Mr. F. A. Thompson
Mr. L. J. Fisher	Mr. W. E. Thrailkill

FROM: Roger Milliken

Sterling Smith has just sent me a copy of a small article from BUSINESS WEEK which pictures a piece of machinery in a plant on which has been stenciled the following:

REPLACEMENT
COST
$22,000.00
DO-NOT-ABUSE

The company (Clark Equipment Co.) has reduced breakage expenses by 20 per cent at its Battle Creek, Michigan, plant as a result of price tagging all of its production equipment. They found that the workers were more careful when they were reminded visually of the cost of the machines they were working with.

It seems to me this is a splendid idea that would cost very little to install in our mills because it would obviously not be necessary to put a price tag on all of our machinery.

General Counsel Exhibit N-39

but for instance, we could put it on the head ends of each line of spinning frames. Thus where we had a loom assignment of 100 looms to a weaver and the replacement cost of the looms was listed at $1,000, a weaver would quickly get the idea that he was responsible for $100,000 worth of equipment. Not only should this work towards reducing the breakage on machinery but it should also tend to get the story over on how much we had to put into capital assets to provide each worker with a job.

R. M.

e.

cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud

General Council Exhibit N-40

DATE: March 30, 1955

TO:
Mr. J. C. Arnold
Mr. J. Frank Richie
~~Mr. Geo. Z. Dunn~~
Mr. W. S. Hawkins
Mr. Carroll Hester
Mr. C. F. Hughes
Mr. Jack Jefford
Mr. S. V. Parris
Mr. B. C. Moore
Mr. Thomas Wilson
Mr. G. C. Lindsay
Mr. U. C. Crenshaw
Mr. Geo. Rankin
Mr. A. T. Wilbanks
Mr. M. S. Christman
Mr. T. E. Peterson
Mr. L. H. Good
Mr. J. A. Garner
Mr. Paul Poston
Mr. Esco Allen
Mr. D. R. Aichner
Mr. C. Moore
Mr. Raymond Owings
Mr. F. A. Preston
Mr. J. D. Allen

FROM: Roger Milliken

Under date of December 6, 1954, Harry Defore sent out a letter advising on the importance of all of us using the 10-foot sensitive length when using the Brush Uniformity Analyzer. I have been after Harry recently because there have been a number of instances where I have learned that mills are not doing their testing on this basis but on some other basis that tends to distort the comparison from mill to mill.

I am therefore writing this letter to ask you to please check your procedures of testing not only on the Brush but also on all of your instruments to see whether you are conforming with the recommendation of Harry Defore's department. If upon checking you feel that it is wrong to conform, would you please write me a letter with a copy to Harry Defore as to why you think your method is better and then we can decide whether it should be adpoted for the whole organization. In the absence of receiving a letter from you, I will assume that you

have been or will immediately start to conform with the standard procedure as set up by his department.

cc: Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. J. J. Norton
Mr. I. S. Pitts
Mr. J. M. Oeland
Mr. A. B. Sibley
Mr. R. Brandt, Jr.
Mr. G. Asnip
Mr. R. C. Edwards
Mr. E. H. Hines
Mr. W. B. D. Stroud
Mr. G. G. Simmons
Mr. J. M. Bailey
Mr. L. C. Ellis
Mr. H. L. Pratt
Mr. W. E. Broadwell
Mr. J. A. Ferguson
Mr. J. M. Jackson
Mr. T. C. Jolly
Mr. D. R. Arrowood
Mr. W. H. Stallworth
Mr. H. F. Staples
Mr. C. T. Holland
Mr. Geo. Baker
Mr. W. F. Garth
Mr. M. G. Wallace
Mr. A. G. New
Mr. Wm. Fiske
Mr. Roger Milliken
Mr. T. D. Truluck
Mr. Harry Defore
Mr. R. A. Arbuckle

General Counsel Exhibit N-42

May 12, 1955

Mr. Roger Milliken
234 S. Fairview Ave.,
Spartanburg, S. C.

Dear Mr. Milliken:

We have a copy of your letter to Harry DeFore suggesting that testing procedures be established to get the maximum usefulness out of our imperfection counters. I passed this letter on to Mr. Hawkins and he has made the following comment:

> "Pending other advice, we have correlated imperfection count with neps on yarn blackboards and will test neps/1500 feet of yarn for weekly reporting."

We are very anxious to utilize this machine to the best advantage. Because of the availability of Memphis cotton we are going more and more on irrigated and are very anxious to see to what extent this affects the quality of our yarn. We will be glad to work with Mr. DeFore as to his suggestions and over all program for the cotton mills.

Very truly yours,

J. M. OELAND,
Treasurer

jmb—m
cc: Mr. Harry DeFore
Mr. W. S. Hawkins

General Counsel Exhibit N-43

Date: April 30, 1955

To: Mr. George Asnip
Mr. J. M. Bailey
Mr. George Baker
Mr. Marion Beacham
Mr. D. I. Beal
Mr. Randolph Brandt, Jr.
Mr. S. J. Craig, Jr.
Mr. Ernest DeFore
Mr. R. C. Edwards
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. C. T. Holland
Mr. W. S. Manning
Mr. Jos. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. T. E. Peden
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill

FROM: Roger Milliken

In attending mill meetings in recent months, I have been tremendously impressed with the development jobs that have been performed by either the technical service departments or the plant engineers that were originally placed out on loan by the Research Corporation to the mills.

Now that we have so many new areas of study which we want to investigate in our manufacturing operations, I am writing to ask you whether you couldn't find very good use in your organization for a trained engineer provided they could be located by the Research Corporation. It seems to me that in almost every instance where we have had such an engineer working, they have many times paid for their salary or they have been incorporated into the actual management of your operation with very desirable results.

Could I please have your comments on this?

R.M.

cc: Mr. R. B. Newton
Mr. A. B. Sibley
Mr. M. C. Stone
Mr. W. B. D. Stroud
Mr. W. A. L. Sibley

General Counsel Exhibit N-44

May 12, 1955

Mr. Roger Milliken
234 S. Fairview Ave.
Spartanburg, S. C.

Dear Mr. Milliken:

I have discussed your letter regarding a resident engineer similar to the arrangement with Research Corporation when Ray Teher was with us, with our technical and production superintendents.

The first question, of course, that arises in our minds is whether we can justify this additional expense. There is no doubt in my mind that such an arrangement would be very helpful, but we are at a disadvantage if some of the other mills get good results without the expense of an extra salaried man. I have found out that several things you have suggested to us that I questioned at first have proved of such value that I am willing to be guided by your advice in the matter.

In discussing the matter here we are wondering if a man like Mr. Robinette who is presently with Mr. Bush's department would be the type that we would desire. We have been very much impressed by his practical approach to problems as he has made visits here through our plant.

The fact that he has had technical college training and experience with Cayley seems to stand him in good stead when we ask for advice on practical approaches to our technical problems. It is our feeling that we could get more out of a man of this type than we could by getting an engineer like

Ray Teher with no mill experience. I do not want to intimate that Ray's experience was not very helpful to us. His practical experience working with Mainer brought in a lot of ideas that were valuable to us and Research. It did take him a good while to get started with us while we feel that a man like Mr. Robinette could immediately help solve some of our engineering problems.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m
cc: Mr. W. S. Hawkins

General Counsel Exhibit N-45

DATE: May 13, 1955

TO: Mr. George Asnip
Mr. J. M. Bailey
Mr. George Baker
Mr. Marion Beacham
Mr. D. I. Beal
Mr. Randolph Brandt, Jr.
Mr. S. J. Craig, Jr.
Mr. Ernest DeFore
Mr. R. C. Edwards
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. C.T. Holland
Mr. W. S. Manning
Mr. Jos. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. T. E. Peden
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill

FROM: Roger Milliken

Recently Tom Watson of Judson made a talk before the Maintenance Engineers at a convention in Chicago and because of questions directed to him from the floor after his talk, disclosed a great deal of what we are doing on machinery maintenance which subsequently got printed in one of the textile magazines.

This release of information can only help our competitors and therefore hurt us and I am writing this letter to say that we should and must adopt a policy whereby we close up any possibility of information on things that we are doing getting to our competitors either at a technical meeting or by articles in the trade journals.

I am writing this letter to personally ask you to see to it that this policy is made clear to any and all members of your organization who may be attending trade meetings.

R.M.

General Counsel Exhibit N-45

[HANDWRITTEN]

Bill Hawkins
Bill Stalworth

We will have to keep this in mind if we send anyone in our organization to any type meeting where they may enter into a discussion. This of course outside D.M. groups.

JMO

cc: Mr. H. C. Byrd
Mr. Russell Bush
Mr. Harry Defore
Mr. K. M. Lowry
Mr. R. Newton
Mr. A. B. Sibley
Mr. W. A. I. Sibley
Mr. S. L. Smith
Mr. M. C. Stone
Mr. W. B. D. Stroud
Mr. T. D. Truluck

General Counsel Exhibit N-46

DATE: September 15, 1955

TO:

Mr. George Asnip	Mr. C. T. Holland
Mr. J. M. Bailey	Mr. Jesse M. Jackson
Mr. George Baker	Mr. W. S. Manning
Mr. Marion Beacham	Mr. Jos. A. Meehan
Mr. D. I. Beal	Mr. J. J. Norton, Jr.
Mr. S. J. Craig, Jr.	Mr. J. M. Oeland
Mr. Ernest DeFore	Mr. T. E. Peden
Mr. R. C. Edwards	Mr. I. S. Pitts, Jr.
Mr. L. C. Ellis	Mr. H. L. Pratt
Mr. J. A. Ferguson	Mr. H. B. Risher
Mr. L. J. Fisher, Jr.	Mr G. G. Simmons
Mr. Winston Garth	Mr. F. A. Thompson
	Mr. W. E. Thrailkill

FROM: Roger Milliken

I am very anxious to make a spot check on the total number of people who are on your payroll the week ending September 17th, and then another figure as to how many people got less than 40 hours of work. If you do have a breakdown on this figure as to why they got less than 40 hours, I would appreciate your working this into the statistics.

[HANDWRITTEN]

Number making 40 hours and over
" " less than 40 hours
" on payroll or leave
Total on payroll

Number less than 40

Lost time sick & personal	S-F-P-
" " send out	H & L
" " asked "	E
" " day of rest	N

cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

General Counsel Exhibit 47

DATE: September 23, 1955

TO: Mr. George Asnip
Mr. J. M. Bailey
Mr. George Baker
Mr. Marion Beacham
Mr. D. I. Beal
Mr. S. J. Craig, Jr.
Mr. Ernest DeFore
Mr. R. C. Edwards
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth.
Mr. C. T. Holland
Mr. Jesse M. Jackson
Mr. W. S. Manning
Mr. Jos. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. T. E. Peden
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. H. B. Risher
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thraikill

FROM: Roger Milliken

This is the time of year when Community Chest and other organizations put pressure on us to permit payroll deduction plans in the mills, and I recently learned that one of our mills did not thoroughly understand what our policy was and therefore I am writing this letter to make certain that it is thoroughly understood.

This matter has been discussed several times and it was decided that it would be policy not to permit payroll deductions of any kind because of conviction that it is the right of the employee to do what he wishes with his money and that too much pressure can be brought to bear by overseers, second hands, and others when plant wide campaigns are on.

I am writing this letter to ask that you please observe this policy that we do not make any deductions except those that are mandatory by law.

cc: Mr. A. D. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

General Counsel Exhibit N-49

DATE: December 12, 1955

TO: Mr. R. L. Collett
Mr. E. F. Flanigan
Mr. C. W. Kable, Jr.

FROM: Roger Milliken

It has come to my attention that in one recent instance one of the mills was accruing less for depreciation on certain items than it is possible for us to do under the regulations.

Because getting the maximum depreciation charge is of enormous importance to our business if we are to provide the funds to keep modernized, I am writing this letter to ask you as a committee of three, with Charlie Kable as chairman, to make an immediate study of our situation in all mills with the objective of setting up procedures that will insure the attainment of the following objectives:

1. That we get as charge-offs against current expenses all those items that can be so charged.

2. That we set up the maximum depreciation possible on each item purchased.

As it is now, each mill shows a different procedure on this and it is my hope that as a result of your joint study it will be possible to work out a uniform procedure that will accomplish the above goals.

I am sending a copy of this letter to all of the treasurers

so they may know of this program and will be prepared to discuss this with you as your study proceeds.

cc:
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

General Counsel Exhibit N-50

DATE: December 16, 1955

TO: Mr. J. J. Norton, Jr.

FROM: Roger Milliken

I was talking with Colonel Springs on the telephone this morning, and our discussion got into loom let-off motions. He told me that they had worked out a very excellent let-off motion for Model E looms.

Because of the exchange of information that you have had with Springs recently and your great interest in weaving, I thought you would want to investigate this immediately to see if there were anything of value that they had. If you do find out something of interest, could you please plan to pass it on to our other mills.

cc:
Mr. H. C. Byrd
Mr. K. M. Lowry
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. W. A. L. Sibley
Mr. M. C. Stone

General Counsel Exhibit N-51

DATE: December 21, 1955

TO:

Mr. George Asnip
Mr. J. M. Bailey
Mr. George Baker
Mr. D. I. Beal
Mr. S. J. Craig, Jr.
Mr. Ernest DeFore
Mr. R. C. Edwards
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. Jos. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. Y. E. Peden
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. H. B. Risher
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill

FROM: Roger Milliken

I visited several competitive mills in the last 2 or 3 weeks and find that they are considerably behind us in the matter of spinning speeds. I think in this field we have an advantage over our competition that means a lot, and I am writing this letter to suggest that we keep this information as to what we are doing on our speeds as quiet as possible: May I suggest that whenever we have visitors from other mills going through that we do our best to keep off this subject of spinning speeds.

cc: Mr. Harry Defore
Mr. K. M. Lowry
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

General Counsel Exhibit N-52

DATE: December 17, 1955

TO: Mr. R. H. Bush
Mr. H. C. Byrd
Mr. Harry Defore
Mr. K. M. Lowry
Mr. S. L. Smith
Mr. T. D. Truluck

FROM: Roger Milliken

Hal Byrd has recently instituted a program of trying to find out as much competitive information as possible from suppliers about what is going on in the industry and what is new, and is then bulletining this information to members of the organization.

Several of the mill managers have expressed enthusiasm for getting information this way, and I am writing to you to ask that you please plan to do something similar. One of the big problems of an organization like ours is that of getting as much information as possible and communicating it to all interested parties. Each of you is in contact with individual mills in our group and with other mills, and if you could please make a note to at least once a month write to all of the mills giving them any information that you have picked up either in our own mills or elsewhere that you think would be helpful to them, it would be extremely helpful to all

Could you please see that I get copies of these letters, as I am very anxious to follow new developments.

RM

e.

cc:

Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

General Counsel Exhibit N-53

DATE: December 23, 1955

TO: Mr. George Asnip
Mr. J. M. Bailey
Mr. D. I. Beal
Mr. S. J. Craig, Jr.
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. W. Garth
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. Jos. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. T. E. Peden
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. H. B. Risher
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill

FROM: Roger Milliken

SUBJECT: Visit to West Point

cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone
Mr. R. H. Bush
Mr. H. C. Byrd
Mr. Harry Defore
Mr. K. M. Lowry
Mr. R. B. Newton
Mr. S. L. Smith
Mr. T. D. Truluck

Monday and Tuesday of this week Marshall Stone and I visited at the West Point Manufacturing Company, and the following will list some of the things which we saw which may be of interest to you:

1. In a new plant that we visited that was devoted to the making of their non-woven fabric, which plant is surrounded by a fence and gates because they are very anxious

to preserve secrecy, they are planning to use a television camera which would be placed at the gates which would throw an image in the office during the daytime and in the boiler house at night. This would make it possible to operate by remote control the opening of the gates for properly accredited people and vehicles which presented themselves at the gate and would thus remove the necessity of having a watchman. They reported that the initial cost of such an installation would be $3,500 for equipment and approximately $500 a year operating expense for electricity and maintenance of the equipment.

It seems to me that any mills having watchmen would be well advised to consider this possibility and by a copy of this report, I want to ask Research to familiarize themselves with the equipment that Mr. Fred Struther down at the West Point laboratory is planning to use so that any person having to find out about it can contact Research and get full information. May I also ask each of you and Research to do some real thinking on how we can adapt this idea of television to our operations. West Point have men in front of and in back of some of their slashers, and they plan to investigate the adoption of this idea to the slasher so that they could eliminate the back men and thus cut their costs tremendously. There must be places where intelligent thinking on our part would find uses for this new industrial tool. Perhaps this would make it possible for us to eliminate boiler attendants by making it possible to read instruments on the boiler in the machine shop or elsewhere. Please think about this and let Research have any ideas that you come up with.

2. In this plant, where they were striving for terribly even feed on the card that prepares their non-woven fibers, they

had Dodenhoff hoppers with weigh boxes in tandem. They had an electric eye two-thirds of the way up the hopper on the second machine which, started and stopped the first hopper with weigh box. In this way they kept the level even and eliminated the variation in delivery to the second weigh box, which is caused by differences in pickup by the apron when a hopper is loaded as against when it is almost empty. I don't know how much this would help some of our operations, but it is certainly worthy of consideration. In this connection, they like the Dodenhoff hopper with the weigh box better than Proctor & Schwartz or anybody else.

3. Here again, as at the two mills I visited last week, they are using 40" beams at their warpers and feel that they are getting a very good saving from their use. In their spooling and warping room they had at the back of each warper creel and at the empty bobbin delivery end of the spooler a mounted spindle run by a ¼ h.p. motor which they would turn on by a switch and which was used to pull bad yarn off of tangled cheeses. Their 30" beams were wooden Allen beam heads as contrasted with metal heads that I saw at Joanna and Enoree. By copy of this letter, could I please ask Purchasing to check with suppliers and find out the manufacturers' claim for the relative advantages of wooden heads over metal heads and vice versa.

4. They were rewinding their filling for 500 looms on Abbott quillers and figure they break even in cost on any yarn numbers of 12's and under. They are using a quill which they have cut back somewhat at the butt and they stated that they got 40 percent more yarn from this quill and rewinding

than on the direct spun filling. Here again, as at Enoree, they were feeding the quilling machine hoppers by conveyor direct from quill stripper which was located in the same room. We seem to be behind in the use of conveyor equipment from quill strippers to spinning room or hoppers in rewinding. Will every mill please investigate savings here.

Where they had two Abbotts they had located them with the feed hopper at opposite ends as we do but had recently moved the activating mechanism up to the middle of the frames so that the working areas would be always opposite each other, thus saving operators walking time.

They also had worked out a little metal mechanism in which a metal head moved down every time a bobbin was doffed and served to help any quill that got stuck to doff and not stop the machine. If the quill had doffed properly, this hammerhead hit the air and no other moving part.

They also had installed on the top of the machine a link belt conveyor to which were attached approximately 40 upright pieces of metal 2 or 3 inches in diameter and 6 inches high which rotated at the same speed as the winding heads and on which were placed at the end of the machine two full cheeses of yarn. They claimed that this made it a lot easier to creel up this machine, and which resulted in a saving. They said they had stolen this idea from Greenwood Mills which has had it in use for some time. They said that Abbott knew about this but weren't willing to put it onto the machine. From the way it was operating, I would certainly recommend that all mills with an Abbott investigate.

5. On their spinning this mill had a complete installation of underframe cleaners but old type overhead cleaning. They said that they preferred these cleaners to the Octopus

cleaners which they claim their spinners and doffers disliked very much. They felt that the installation of the underframe cleaners gave them 24 hours extra life on their travellers. Have we investigated if we get longer traveller life since installing Octopus cleaners?

Colonel Springs, as I remember, prefers the Octopus type cleaners to underframe cleaners, for which he has no use.

6. Their slasher room was completely equipped with the West Point type of creel which is the same as the one they have at Joanna and Enoree (it looks like we are behind on this development and I hope that Purchasing is working out a way for making a real study of how we can buy creels of this type, should the mills so desire, at a bargain rate.) They also are installing double size boxes and say they have observed greatly reduced shedding in their weave room as a result and hence a noticeable pickup in efficiency.

7. They permitted smoking in all of their mills and had set aside small areas for this. I know that some of our mills have done the same and others still permit smoking only in the wash rooms. It is my understanding that a couple of our mills have set it up whereby they have set aside a place big enough for only one man or woman to sit and smoke. May I suggest for your consideration that this is infinitely superior to letting people congregate and smoke in the wash rooms where they are not under observance of supervision, and by setting up space for only one person, people do not spend as much time smoking and talking as when the space is large enough to accommodate 2 or 3.

8. They had just installed dispensing machines for dispensing milk and had found that there was a terrific de-

mand for this product. Interestingly enough, they reported that the sales of Coca-cola, which average 9 bottles per person per week. did not go down as a result of the installation of the milk machines. They reported that the people drank the milk for nourishment and the Coca-cola for the "Pause that refreshes".

9. At the Research Department we were exposed to a new shuttle that Watson and Williams is making and distributing which is made out of West Point non-woven Latuck. The advantage claimed for this shuttle was that it had self-healing features which gave it a considerably longer life and also did not create the bad work that a wooden shuttle can make when it splinters. It is my understanding that this shuttle will sell for twice the price of a Dogwood shuttle but is claimed to last 5 times as long. Marshall Stone liked it and the idea very much. Will the Purchasing Department please check the full story on this shuttle and mail to all mills where it can be used.

General Counsel Exhibit N-54

DATE: December 30, 1955

TO: Mr. Russell B. Newton

FROM: Roger Milliken

I have been disturbed to learn that on some of the new machinery that we have been receiving recently deficiencies have developed due to our not following the recommended procedures. We have been buying and will be buying so much new machinery that I think it is of paramount importance that we as an organization set up some procedure whereby this new machinery will be inspected very soon after installation so that things like this cannot happen again.

I am writing this letter to you with copies to all of the mills with the request that you get in touch with them and work out jointly a procedure that you all feel should be followed so that we do have the maximum protection against making mistakes of this nature in the future. Could you please plan to present the conclusions and recommendations you have arrived at after consulting with the mills at the February 6th meeting that we are planning to have. With the millions of dollars that we are investing in new machinery, this is a very important project.

General Counsel Exhibit N-55

DATE: January 12, 1956
(Dictated January 11th)

TO: Mr. J. A. Meehan
Mr. J. J. Norton
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

FROM: Roger Milliken

I have just been reviewing with Ken Lowry and Hal Byrd the overall requests for capital expenditure that have come in with the idea of seeing what can be done in terms of group purchasing, etc. As a result of this discussion they have agreed to present to our meeting on February 6th their conclusions and recommendations on different items that are under consideration by a number of mills. Some of the recommendations that they will want to make will be confidential.

Because our agenda for the 6th is already so long, I am going to suggest that the treasurers get together the morning of the following day as a group to make final decisions on firming up our purchases of new machinery so that the Purchasing Department can then proceed to place the orders to best advantage. I am writing this letter, therefore, to ask you to please put on your schedule that we will meet at 9 o'clock the morning of the 7th. I am sure that there will also be other things coming up in Monday's meeting that we will want to discuss in a smaller group than the one that is assembled on Monday.

cc: Mr. H. C. Byrd
Mr. K. M. Lowry

General Counsel Exhibit N-56

DATE: March 30, 1956

FROM: Roger Milliken

Mr. Ross of the Barber Colman Company told me of a study that had been made a long time ago at their concern which made them believe that the trend towards larger packages in spinning was not a permanent one. This they concluded because of the additional power costs that were involved in running the larger package.

I therefore asked Ken Lowry what information his department had on this subject, and he sent me the attached letter from Harold Moss which I hope you will read. I think this points out very conclusively that there are decided advantages to running a 1⅞" ring on 31½'s cotton and undoubtedly the same thing applies on all yarn counts. Could you please review your situation once again to determine whether you cannot get additional production (and thus reduce your costs by reducing your overhead) by going to a smaller ring size.

This matter is so important that I would appreciate it if, after you have made this study, you would write and let me know what conclusions you have come to as regards your mill.

General Counsel Exhibit N-57

DATE: May 7, 1956

TO: Mr. J. M. Bailey
Mr. E. O. DeFore
Mr. R. C. Edwards
Mr. J. A. Meehan
Mr. J. J. Norton, Jr.
Mr. J. M. Oeland
Mr. I. S. Pitts, Jr.
Mr. A. B. Sibley
Mr. W. A. B. Sibley
Mr. G. G. Simmons
Mr. M. C. Stone

FROM: Roger Milliken

I have a letter from Joe Norton bringing up the question of our vacation plans which, as you know, are subject to approval by Directors, which was a safeguard which was originally written into the plans in case of serious depression.

If we have not approved vacation plans in our Directors' meetings, please feel free to go ahead and announce them so that the date on which you pay the vacation pay can be known.

General Counsel Exhibit N-58

DATE: June 19, 1956

TO:

Mr. C. E. Anderson	Mr. J. A. Meehan
Mr. George Asnip	Mr. W. H. Moore
Mr. J. M. Bailey	Mr. J. M. Oeland
Mr. D. I. Beal	Mr. T. E. Peden
Mr. S. J. Craig, Jr.	Mr. I. S. Pitts, Jr.
Mr. E. O. Defore	Mr. H. L. Pratt
Mr. R. C. Edwards	Mr. J. V. Roberts
Mr. L. C. Ellis	Mr. G. G. Simmons
Mr. J. A. Ferguson	Mr. F. A. Thompson
Mr. L. J. Fisher, Jr.	Mr. W. E. Thrailkill
Mr. Winston Garth	Mr. M. G. Wallace
Mr. C. T. Holland	
Mr. J. M. Jackson	

FROM: Roger Milliken

In the coming week you will be receiving a letter from Joe Norton about a special loom study project that he is setting up at Gaffney, in which he will be asking you if you are interested in assigning managerial talent for education to this project. The number of men that he can take for this project is limited, but it presents an unusual opportunity for the training of personnel that you feel have future growth potential.

I am writing this letter to ask you to please give his letter serious consideration and to do the same with the man that you will recommend from your mill. Great care is going to be taken in selecting the people who are chosen.

RM

e.

cc: Mr. J. J. Norton, Jr.
Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

General Counsel Exhibit N-59

DATE: December 21, 1955

TO: Mr. J. M. Oeland

FROM: Roger Milliken

When I was at West Point this week, they talked a lot about the cost of a good print cloth mill, and they said that it was their understanding that a good print cloth mill had a labor cost of 16 cents a pound and an overhead cost of 16 cents a pound.

Could you please write and let me know what your cost is by the same token.

R.M.

General Counsel Exhibit N-60

December 27, 1955

Mr. Roger Milliken
234 S. Fairview Ave.,
Spartanburg, S. C.

Dear Mr. Milliken:

We have your letter requesting information as to how we stand on our cost broken down by labor and overhead. We have analyzed this cost and find it as follows:

Darlington Manufacturing Company
Fabric Cost Per Pound

	Labor	Overhead	Total
Ideal	16.00¢	16.00¢	32.00¢
Darlington Mfg. Co. year ended 11/27/55	17.23¢	14.09¢	31.32¢
Proposed labor reductions for 1956—Net 10.06%	15.50¢	14.09¢	29.59¢

I would like to explain that on our proposed labor reduction we have considered $356,000 as being spread over the entire year and are, therefore, taking a net of about half of this proposed reduction. A good part of this amount is in the changing of our E model looms to larger loom beams. We know that this will run over a good part of the year and therefore cannot benefit from the savings until it is completed.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m
cc: Mr. Hawkins
Mr. Goodwin

General Counsel Exhibit N-61

August 5, 1955

Mr. Roger Milliken
234 S. Fairview Avenue
Spartanburg, South Carolina

NEWSLETTER

Dear Mr. Milliken:-

I called Ken Lowry at Hartsville after our telephone conversation with regard to the possibility of Bill Goodwin staying with us three months to see if he could straighten out our weaving problems. Ken said in view of the fact that we are already making plans to have Bill come here to work with us that it might be better to continue along with those plans and let the matter of a longer period of time here unfold itself. I believe this is the best approach and we will keep in mind your suggestion, and as Bill gets into the problems he finds with us we can then make a decision as to whether to let him concentrate on this problem for a longer length of time.

While Mr. Lowry was here yesterday he discussed with Bill Stallworth the opening in D.M.I.E.D. It is my understanding that Bill told Ken that he would like to have a couple weeks to think it over. I will discuss the matter further with him in a day or two.

We are in the midst of sizing warps made out of different weights of yarns to complete the test on the advantages or disadvantages of additional sizing in the yarn. Mr. George Mobley of Research has been here as well as two men from D.M.I.E.D. We are sizing the second sample today, and hope to complete the other two next week. Monday week we are planning to put these warps on 32 looms. It is my understanding that each warp will be cut off and

moved to four looms in the 32 during the weaving process. We certainly hope we will get some information that will be helpful to us in this matter. We are using every precaution to get the right amount of sizing on the warps in question.

Next Tuesday morning at 10:30 Mr. Woodward of Barnes Textiles will be here to discuss the second phase of our weaving survey. At this time he will have information on the day help we have as compared to competition. After the meeting at Clemson last week Russell Newton mentioned the fact that he knew Mr. Woodward and would like to sit in on this next conference. I have arranged for him to be with us. Mr. Lowry is considering coming back or having someone from his department here at the same time.

A good many months ago when Frank Rowe made a survey of our machine shop, he stated that we needed a hobby gear cutting machine. We are using a milling machine for this and Frank says the gears cannot have the best teeth when cut with a milling machine. We have been on the lookout for this type machine in the secondhand market for some time. This week Jim Higginbotham called me and said they had one in a secondhand shop in Castonia, N. C. which they would sell for $2,250.00. I called Russell Newton and he arranged to have Frank Rowe inspect the machine. Frank called me this morning and said he thought it was a good buy; that the machine was in good condition mechanically as far as secondhand machines go, and it had been well taken care of. The shop in question had it partly torn down and Frank said he made a thorough inspection. We have

gone ahead and purchased the machine to be delivered next week.

I have received the confirmation of paying the dividend the last of August from five of the directors. The only two I lack are Mr. Stroud and Mr. Hatch, and I presume theirs will come in due course. I will make plans to pay the dividend as outlined in the letter you signed.

I think I wrote you that we have been working for some time on the complete renovation of our office space. We poured a concrete floor over the entire area and are having this covered with an asphalt tile; we purchased and installed a 5 ton air conditioning unit that is working very well, and we have partitioned off the office area. We have improved our entrance and reception room. My office has been renovated and will be very much improved. We have done this work with our own help and have been torn up for some time but it will soon be completed.

We have had to tear up the spur track in front of the mill and put in new crossties along the entire line. You may remember that we had settled with the railroad on the rent of the rails at the old figure. Under the contract we are responsible to keep this track up using the railroad's section crew to do the work. I worked it out with them for us to take out the old ties, put in the new ones and do the work on the road-bed. This entire operation is going to run between $1500 and $2000.

We here are very happy over the way the sprinkler system turned out. We were relieved in the first place to know that the water we are using was not collecting sediment in the pipes. This was probably because the same water stays

in all the time and does not run through the pipes. We were further relieved to find that the pressure of 150 pounds over the entire system did not show up any weak spots. Grinnell did install about one fourth of the lower weave room of the new system. We also had them to take out one pipe that was running through the upper weave room. We are using some of the old pipe removed to run some sprinkler heads under our slasher room. The insurance inspector has been working toward this end for some time and it is a hazard that I felt we should correct.

Very truly yours,

J. M. OELAND
Treasurer

General Counsel Exhibit N-62

August 10, 1955

Mr. Roger Milliken
234 S. Fairview Ave.,
Spartanburg, S. C.

Dear Mr. Milliken:

I want to let you know the action I took last week with regard to getting our overseers to work together as a team to reduce our loom stops. I called them together and told them about Mr. Stallworth's plans to make a change. While I had them together I discussed the fact that Barnes Textiles stated that competition was able to get their loom stops down on 109x58 to .5. I stated that Barnes Textiles had said that they felt there were some things we would have to do in the way of putting pneumafil on all our spinning and reducing the speed of our X-model looms from 182 to 168 picks per minute. That even though we might question the possibility of going down to .5 loom stops we could go to 1.0 where we were last August and September.

I went over the fact with the group that our pay on a number of studied jobs like weavers, drawing tenders, roving tenders, spinners and doffers was well above the average of competitive mills within the Deering Milliken group and information we had received on other mills; that we had known for some time that the pay of our overseers was less than other of the D. M. mills; that I have been on the defensive in that we had failed to produce at Darlington in comparison with other mills as far as results from a cost angle were concerned. That I was going to make a proposition to the overseers that as a group if we would work

together and get our loom stops down to 1.0 that all the overseers would get an increase of 10 per cent in salary.

We would still be under most of the mills in the D. M. group but I felt a shot in the arm might be a good thing at this time. I did not want to have a let-down, and feel that if the overseers will accept the responsibility we can go right ahead on our program of reducing our loom stops. I already have noticed some things that have been done that encourage me to believe we will show improvement here. There is no doubt in my mind it can be done.

Very truly yours,

J. M. Oeland, Treasurer

jmo—m

General Counsel Exhibit N-63

August 31, 1955

Mr. Roger Milliken
234 S. Fairview Avenue
Spartanburg, S. C.

Dear Mr. Milliken:

You will note from the attached copy of letter I have written K. M. Lowry that Bill Goodwin is going to work with us beginning next week as production superintendent. He came to me last Saturday morning and asked if the job had been filled and whether he could be considered again. I told him in view of the fact that he had told Mr. Lowry that he would stay on in his present capacity I thought the first move to make would be to talk to Mr. Lowry as to whether he would agree for a change or whether Mr. Lowry might have in mind more for him in D.M.I.E.D. than he would get here at Darlington.

Over the week end he talked to Mr. Lowry and told me Monday that he had Mr. Lowry's approval for the transfer. I called Ken and confirmed this understanding. We both made it clear with Bill that there would not be any looking back as we felt one of the things he must decide was whether he wanted to come, and not have this back and forth situation that we have experienced. This is clear with him, and he has accepted the position.

I feel sure this meets with your approval. I think the turning point in Bill's decision was his discovery of the potentials we have here and the possibility of working through our present organization to achieve marked improvement.

I had interviewed besides Mr. Lewis Deal who was formerly with J. P. Stevens, a Mr. Jim Funderburk who had worked for Cannon 18 years at Concord. I was very much impressed with Mr. Funderburk, and feel that Mr. Deal has good potentialities in our organization. It so happens that I had not gone too far with either of these before Bill had talked to me last Saturday.

Very truly yours,

J. M. Oeland.
Treasurer

jmo-m

General Counsel Exhibit N-64

September 5, 1955

Mr. Roger Milliken
234 S. Fairview Avenue
Spartanburg, S. C.

Dear Mr. Milliken:

You will find attached hereto a resume of information I have been able to gather about Mr. James Funderburk and Mr. Lewis Deal. I trust this is what you had in mind. I realize I rambled on to some extent and perhaps have not given the detailed information requested but rather more my impressions. In any event I trust it will serve your purpose.

Very truly yours,

J. M. Oeland
Treasurer

Enc.
jmo-m

General Counsel Exhibit N-65

August 29, 1955

Mr. Roger Milliken
234 S. Fairview Ave.,
Spartanburg, S. C.

Subject: Wage Increase August 21, 1955

Dear Mr. Milliken:

We have completed our plans for the wage increase here at Darlington. You will note from the attached schedule that the wage group were increased an average of 3.49¢ per hour. This was a 3.11% increase as to the jobs and 3.07% increase as to the standard payroll. We have also listed the jobs under $1.00, which we plan to increase next March 1st. There are 47 jobs, or about 10% of our total jobs that we will increase 3.90 cents per hour.

We will be glad to furnish you further details if you wish. In looking over information that was available at Drayton we noted that our first largest categories that is, weavers, spinners, doffers, roving frame tenders and drawing frame tenders averaged as high as any of the D. M. mills, as well as any listed of competition. We decided that we could not see our way clear not to increase these jobs which comprise about 40 per cent of our entire labor force. We decided that we would increase each of these jobs 2 cents an hour. Another large group are our section men, who were increased 3 cents an hour and which brought them in line with what is being paid at Hartsville. All jobs under $1.00 per hour were increased 5 cents and those around $1.00 were increased 5 cents in order to hold the

General Counsel Exhibit N-65

same differential. We made it clear with the overseers there would be no increase next March 1st other than the jobs that are presently under $1.00 per hour.

I wrote you that I had made a proposition to all overseers to increase them by 10 per cent if the loom stops for 109x58 were brought down to around one loom stop per hour, and other constructions by similar reduction. I told them at this time that we would increase their pay by $5.00 per week beginning September 4, which would be part of the 10 per cent. We are planning to make a similar increase to the office salaried employees and an adjustment of cents per hour in the range rates of the wage employees in the standards and laboratory group.

We trust that this meets with your approval, and if you have any questions or suggestions we will be glad to have you pass them on to us.

Very truly yours,

J. M. Oeland
Treasurer

Enc.
jmo-m

General Counsel Exhibit N-67

May 9, 1956

Mr. Roger Milliken
234 S. Fairview Ave.,
Spartanburg, S. C.

Dear Mr. Milliken:

In the discussion yesterday it was brought out as it has been by several of our supervisors, that they thought it would be wise for us to plan to shut down one week for vacations, the week of July Fourth. I discussed with Mr. Poag the question that we post notices to that effect now and he advised against it. I do feel that it has merit, and would like to recommend that we plan to do this, making announcement at the appropriate time if Mr. Poag approves.

It is my opinion that it would encourage our good people to work up until that time if they had it to look forward to. From the condition which I set out in my letter today, it looks like the card room will have very little spare help and we will have to arrange to get in more to give these good people vacations on their request. I would like to have your approval before we move in the matter.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m

General Counsel Exhibit N-68

July 19, 1956

Mr. Roger Milliken
234 S. Fairview Avenue
Spartanburg, S. C.

Dear Mr. Milliken:

We trust that by the next treasurers' meeting we will have materially reduced the number of spare hands and thus decrease the number who get less than 40 hours a week. Looking over our figures that we forwarded to you, we note that of the 126 getting less than 40 hours, the group was broken down as follows: sick 30; sent out 34; asked out 53; vacations 9. Of the 34 sent out we notice that 14 are in the cloth room where we presently have a day of rest program in effect. We are making plans to transfer some of these employees to the weave room and do away with the day of rest. The other 20 of the 34 you will find were either on shifts or in departments that did not operate more than the 40 hours in the week in question. We wrote you that we were presently over-producing our warp yarn, cutting down the running hours on warp spinning, affecting the hours worked in the spooling and warping and carding departments. It was in these departments that these hands were working who did not receive more than 40 hours.

Mr. Goodwin is steadily working on eliminating spare help. Where we have someone dropping out we are either arranging to transfer spare help from another department or seeing if it is possible to do without the spare help in the department which lost the employee. We are hoping as time goes on we can educate our employees to the importance of regular work and this will help us do away with the group that are continually out sick part of the time. We have a policy

limiting the number of days for this cause and have discharged several employees recently for overrunning the number of days out for personal reasons. This policy is very generous, allowing 20 days in a year. We have already discharged several employees with the year just about half gone and probably will discharge others before the end of the year who are on the borderline.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m

General Counsel Exhibit N-69

August 3, 1956

NEWSLETTER

Mr. Roger Milliken
234 S. Fairview Avenue
Spartanburg, South Carolina

Dear Mr. Milliken:

On Monday of this week we had Mr. Bill Lowndes of D.M.I.E.D. with us and he showed the charts to our supervisors that we had at last treasurers' meeting. I feel that this was very helpful in putting over to our group where we stood as compared to the other mills as well as the progress that is being made by some. I was delighted at the interest some of our overseers had in the charts, especially our spinning room overseer who is working very hard to improve his cost. The results are already showing, and I feel sure as time goes on he will continue to make improvements. We realize in our carding that we will have to keep pushing if we want to hold the position we presently have. As soon as we can complete some plans that we have of installation of pneumastop, and dragline to pull out the roving cans we will make further improvements in costs.

On Wednesday of this week Mr. Pete Poag and Mr. T. T. Glenn were with us and we met with our overseers discussing the union situation. Mr. Poag feels that we have everything in hand and would like for us to continue on the same program. I think one thing that has been very beneficial to us is that we have taken an aggressive attitude about our position when changes are being made. I feel that we have kept ourselves on the defensive rather than the offensive during this period. Several things came out in our meet-

ing pointing up the fact that we were continuing to run the plant and calling in line any offenders who might interfere with the proper management functions. We are making the changes only that fit in with our previous policies. I told Mr. Poag when he suggested the visit that we fight the union activities and worry about any action that might be brought against us later by the Labor Board." I called to his attention the other day that we had done just this, and got his approval to continue.

Yesterday we had a visit from Harry Defore and made plans to have Harry and Ray Toher present to our supervisory the program that has been put over at Monarch of test line improvements and training. It was Harry's idea to help us begin to think about the program and utilize experiences at Monarch to make improvements in our plant. I feel that this is a good suggestion and we can benefit in the intervening time while Harry's group in working at Gaffney.

We were glad to have a sale made by the New York office of 225,000 yards of our 3.00 poplins. We have completely sold our 390 poplin inventory. We have made plans to put 40 looms on this construction, and made a sale this week of 300,000 yards of the anticipated production. We are going to increase the 40 looms to 80 on this style taking them off of our 109x58 broadcloth.

The delivery of our 50" looms started this week and we are expecting to have in the 84 looms by the end of next week. We are putting them in the warehouse awaiting the contracted work to be completed in the mill. I will feel relieved when we can decide on the styling of these looms. So far nothing has materialized. It will be necessary for us to know the construction that we will put on looms in order

to work out the proper balance in our mill. We are contemplating the possibility of having to put more of our 40" looms on 80 sq. but the styling of the 50" looms can materially affect our balance one way or the other depending on whether they are on a slow or fast pick goods and the ends in the warp.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m

General Counsel Exhibit N-70

August 31, 1956
Newsletter

Mr. Roger Milliken
234 S. Fairview Avenue
Spartanburg, South Carolina

Dear Mr. Milliken:

I presume that Mr. Poag has kept you advised of the fact that the election is set here for next Thursday, September 6th. Pete was here Wednesday of this week and we went over plans for this election discussing with our overseers their opinions about certain questons with regard to what management should do. We decided that we would not bring all the people together for me to make a talk to them nor would we send out a letter to each employee. It was our feeling that the supervisors had done such a good job working with the employees that we would continue along this level. I did make a talk to the salaried group in the office, standards and laboratory, setting forth management's position and giving information to them about this election. This morning we had a meeting of second hands and overseers going over our plans and approach. Mr. T. J. Glenn has been with us since Wednesday and expects to spend Tuesday, Wednesday and Thursday of next week here. Mr. Poag expects to be back here Wednesday and Thursday.

I was away last week on one week's vacation. Mr. Poag got in touch with me on Monday and stated that it seemed to be the feeling as expressed to him by Mr. Goodwin and our supervisors that closing down for the stock car races to be held here Monday would be advisable. Mr. Poag had talked to Alan and Bill Sibley about this and they felt that it should have consideration. I immediately called Mr.

Goodwin and suggested to him that he have all the overseers in and if they felt it was the best it was the best thing to do to post notices that we would close down Monday for the stock car races. We have copies of letters forwarded to certain employees by the union with regard to their plans for a meeting Sunday afternoon. In this letter they made a good deal over the fact that we were closing down and posting notices within an hour after we had received notice from the labor board of the election. It was our opinion that their emphasizing the change in our usual plans of running during this day would not materially affect the outcome.

We are still confident that we will win this election. At the same time we realize that a lot of eleventh hour rumors will be used and we will have to be ready for any eventuality. I have been working with a group of our friends uptown, and anyone else who I feel would be helpful to us in talking to our employees. We are especially stressing the importance of everyone voting. We are scheduling for each department plans for sending employees out to the polls. Mr. Glenn certaintly is proving helpful to us at this time as well as other times when he has been here working with us.

We have been selling some goods during the last several weeks amounting to about each week's run. We are accumulating some inventory on our 109x58 broadcloths and will commence accumulating some inventory of our 3.00 109x46 poplins. We are hoping that after Labor Day something will open up on these styles.

The efficiencies in our weave room have been better the last three weeks than for a long time and the poundage of cloth coming through this period will be the best we have had this year. We have been working with Mr. May on styling

up our 50" looms that we hope to have in operation by October 1st. We are now dickering with Arno Adhesive Tapes on a 300,000 yard order of a 40" 80 x 72 printcloth. I am a little worried over the fact that there seems to be some confusion in bidding on this contract. We had offered to take a much lower price than we wanted but understood competition would accept in order to get these looms started up on a simple style. Mr. Goodwin was hoping to start the looms up at 192 P/P/M and during the breaking in period felt it would be well to have a simple printcloth style to weave. After we made a price we understood that Gaffney had asked a cent a yard over what we and competition would be willing to consider. The order has not been placed as yet as we are waiting on specifications before commiting outselves. On the other hand, we are so anxious to get an order for these looms and get them started up on time that we are planning to take the order if we can meet the specifications.

We are moving right ahead on preparing the area for the new looms. We have completed the moving of the supply room and will complete this week end the moving of our canteen to a new area. Fiske-Carter got the contract for the work and they seem to be doing a good job and moving right along on their part in preparing the area in question.

We have received and installed six of our junior cleaners on our openers. We anticipate moving the machinery to make room for the other six this week and get them installed next week.

The installation of the ducts for the pneumafil for the warps in spinning are moving along very well. We have not received a shipment of parts for putting on the

pneumafil but this should be coming along pretty soon. In a way I am delighted to have this breathing spell of no big installations in any rooms as it has enabled us to settle down and do a better job of keeping things running all right during this period.

Very truly yours,

J. M. OELAND
Treasurer

jmo-m

General Counsel Exhibit N-71

September 14, 1956

Mr. Roger Milliken
234 S. Fairview Ave.,
Spartanburg, S. C.

Dear Mr. Milliken:

I do not wish to burden you with information and news of Darlington. The entire community is very much upset and are inquiring of me what I think they should do to get you to reconsider. I have discouraged any possibility that anything can be done to change the course of events. I understand several meetings have been held and some petitions are being circulated among the workers in the mill. I suggested to Mayor Buchanan that he call Pete Poag about his idea of getting up some affidavits from employees who had been contacted within 24 hours before the election in order to throw out the election with the Labor Board. I understood that MacGruler who conducted the election expected to be here and Mr. Poag had suggested that he talk to Mr. Buchanan. We all know that even if the election could be thrown out the Labor Board would not consider an election any time soon in view of the statement from management that they were planning to liquidate. I, therefore, do not see that anything could be accomplished along this line and have suggested to them the same. At a meeting last night I understood that the directors of the Chamber of Commerce were considering going to Spartanburg in a body and discussing the matter with you. A definite decision has not been made, and I did suggest that it might be well for a friend of Alan Sibley to call on him and discuss with him their plans as I felt Alan's judgment would be invaluable in guiding the situation that we find we are presently in.

General Counsel Exhibit N-71

I have been called by several news reporters for comments, which I have refrained from giving. I told them that I expected a news release would be given out by you which would cover management's reason for the action. I have not noticed such a release in the papers here but presume that you have it under advisement.

We have taken all the steps we feel are necessary to hold up any further expenditures. Hal Byrd will be here Monday at which time we will again appraise the situation and do whatever we can to make plans for the best interests of all concerned. Mac Thornton is here to appraise our supervisors and he feels that perhaps he can complete this work by Tuesday or Wednesday of next week.

Very truly yours,

J. M. Oeland
Treasurer

jmo-m

General Counsel Exhibit N-72

September 28, 1956

NEWSLETTER

Mr. Roger Milliken
234 S. Fairview Avenue
Spartanburg, South Carolina

Dear Mr. Milliken:

We were hosts along with Hartsville to the spinner group this week. They were here Wednesday morning and had discussion and went through our plant and had lunch here. In the afternoon they went over to Hartsville and went through their plant and had supper with them. A very good group was in attendance: from the service department there was mainly a group from Research.

Yesterday two of our overseers, Bill Hammond of carding and D. K. Shirley of spinning, went to Judson to be interviewed by them there. The visit was nothing more than the preliminary chance to get to know these men. I think I wrote you last week that these two had been up to Laurel Hill, North Carolina, discussing an overseer's job in one of the Morgan plants. I gathered from the grapevine that Curtis Simpson at Hartsville has given a notice and he contemplates being superintendent of this plant. I further gather that Curtis has been discussing this with the plant and approach was made to our overseers even before the election to feel them out as to whether they would consider a change. Early Jones was here yesterday and discussed with Tom Baker who is our master mechanic. Both Early and Frank Rowe knew Tom at Danville and consider him a splendid man. It is my understanding that Tom has been approached by someone at Danville about his returning there.

General Counsel Exhibit N-72

I feel that it would be very helpful if I could have some word from you as to what promises I can make the supervisors should the stockholders approve the action of the board of directors. I feel that I could reasonably promise them that you would want to keep them here until November 30th on the payroll. I hesitated to make this promise in view of the fact that I had no word from you as to what you felt would be the right thing. We have also been asked by the group about what action will be taken on the year end bonuses. Bill and I told the group that these bonuses were approved each year by the board of directors and therefore no commitment could be made on our part about what could be done.

There is another matter I would like to get your approval on. We have paid T. J. Glenn for all his expenses in coming to Darlington during the period we were fighting the union and have reimbursed Monarch Mills for time he was away from his job there. I would like very much to send him a check to show our appreciation for the hard work he did with us during this period. I had in mind a check for $500.00 but I have not committed myself awaiting your approval.

We are very thankful to say that the plant is running very well and efficiencies are holding up as well as could be expected. We are trying to keep everything in status quo until the 17th. A few of our better employees are being offered jobs and a few are leaving. It is encouraging to know that practically all of these that leave are asking us to let them come back should the mill continue to operate.

I understood that you have been out of town and were expecting to return the latter part of the week. I trust that you will find time beginning next week to let us know if

there are any changes in your plans or whether you would advise us to act differently than we have been doing in the intervening period since the directors' meeting.

I have tried not to worry you with information regarding the action being taken by Mayor Buchanan and other interested citizens in keeping the company operating. I have tried to kep Mr. Poag advised and have had several telephone conversations with him. I feel sure that he will discuss the matter with you and give you such information as he feels will be advisable.

Very truly yours.

J. M. Oeland
Treasurer

jmo-m

General Counsel Exhibit N-73

October 12, 1956

Mr. Roger Milliken
234 S. Fairview Avenue
Spartanburg, S. C.

Dear Mr. Milliken

I have been going over in my mind some of the things that perhaps we should discuss in the directors' meeting after the stockholders meeting on Wenesday. I took the liberty of calling Mr. Poag this morning and suggested that he give some thought to whether some of these items should be discussed, and implications, if they were approved.

I discussed with him as to whether the directors should consider the payment of vacation pay for employees from April 1st until closing of the mill if the stockholders approve the liquidation. I asked him if the directors approve such action whether this payment would be considered severance pay or vacation pay.

I discussed with him the oral understanding I had with Frank Fleming, who is presently receiving $150.00 per month from us until such time as he reaches 65. The oral understanding I had with Frank was that payment of this retirement would be approved by the directors each year; that in the event the mill did not show profits each year that would warrant payment, or should close down, that this retirement pay would be discontinued.

I discussed with Mr. Poag the question of the water being furnished to certain houses and whether any action should be taken at this time with regard to this problem should the plant be sold. I asked him if any statement about this fact should be made at the sale of the plant.

General Counsel Exhibit N-73

Other items that I would like to outline to you that perhaps should be considered at the directors' meeting are:

1. Dividend payments for November 30, 1956
2. Bonuses for office and salaried group
3. Group insurance
4. Remuneration for Mr. Glenn

In the case of the bonuses to be paid to office and salaried group I would appreciate your giving some thought as to what we shall do for Bill Goodwin. Early in the year I discussed with you the possibility of putting Bill on an incentive bonus of one-half of one percent. This bonus arrangement was never made, and it is my feeling now in view of the fact that there will probably be no profits at Darlington this year that we consider a cash bonus for Bill for the splendid work he has done.

We have a letter from Mr. Paul Wilson stating that for the twelve periods this year we have collected $800.00 more than we paid out on our group insurance and it was his suggestion that we post notices that the group insurance collection would be waived for the last two weeks the mill was in operation. It was his opinion that it is very important that we not be left with employees' funds on the mill books should the plant be liquidated.

We continue to operate satisfactorily in the mill. We are experiencing some shortage of help, especially of doffers in the spinning room. It is our opinion that some of our people are out hunting jobs elsewhere and are not reporting for work. Should the vote be to liquidate next Wednesday it is possible this feeling will spread and it would be better for us to consider running out the stock in process

General Counsel Exhibit N-73

as promptly as possible. We would have to take some measures to get another D. M. mill to complete our present orders or else see if we cannot trade with the customers to make some adjustment for the incomplete portion of the orders.

We were requested by Mr. Kable to get up some figures on how we will stand year end. I am sure you realize that there are several items that will affect our year end profits or loss. Last period we absorbed $7.000 of our loss in hedges, and we have about $50.000 more. I think I wrote you that Mr. Truluck feels we have a profit in our inventory of cotton to offset this. It would look logical to include the loss in hedges against our operating statement, and if there is any profit in our inventory it will go against liquidation.

Some discussion has been had by Mr. Byrd on some of the larger items expensed in the way of Dixon saddles and Duo-Roth with the suppliers. Here again we are presuming that these items will be sold with the equipment and we will not receive any credit in the way of sales or returns.

I had a call from Mr. Lowry listing sixteen of our office and supervisory personnel who D.M.I.E.D. agrees to carry for a period of three months after their separation from the Darlington payroll. We have notified each of these men of the action taken and I feel sure that they very much appreciate it. Several of the men have been discussing jobs with other organizations. If they can have this information for a background of their standing should they seriously consider making a change to plants other than D. M. it will be very helpful. This morning I had a call from J. W. Greene regarding Tom Baker our master mechanic, and Herman Williams our time-study trainee, visiting the Kingstree plant and discussing employment with Mr. Roberts. They have called him and plan to go to Kingstree and seek employment in that plant.

General Counsel Exhibit N-73

We have received proxies for about 122,000 shares of stock. If Henry Simpson is here at the meeting or sends in his proxies for Heyward Lyles to vote it means we will have around 142,000 shares of the 150,000 represented. We are getting some proxies in each mail and by the time of the meeting we may be still closer.

In a telephone conversation with Mr. Poag this morning he mentioned the fact that you are planning to drive down with him Tuesday afternoon and spend the night in Hartsville. Unless I hear further from you I will not send Bill Goodwin to Hamlet Wednesday morning to meet the 8:20 train. It may be possible that Minot and Gerrish are planning to come to the directors' meeting. If this is true please let me know and I will have Bill meet the train.

Very truly yours.

J. M. Oeland
Treasurer

jmo-m

General Counsel Exhibit N-74

November 9, 1956

NEWSLETTER

Mr. Roger Milliken
234 S. Fairview Ave.,
Spartanburg, S. C.

Dear Mr. Milliken:

We had a meeting Wednesday of this week with Mr. Payton, Mr. Gossett and Mr. H. S. Williams of the T.W.U.A. With them were five of our former employees. Mr. Pete Poag and Mr. James and Bill Price were here with us and I presume you will get a report from them on what transpired at this meeting. So little was brought up and discussed that I wondered why they asked for the conference other than to have the local committee in my office. I hope that Mr. Poag can avoid any further meetings with them as I do not see what good a meeting of this nature would accomplish.

We are proceeding on schedule of the installation of new equipment on spinning and looms and our cleaning program. We are shooting at completing all of this work by Saturday November 17th. This will give us plenty of time to get any odds and ends of the equipment that may not have been delivered to us here on the spinning frames and looms. The cleaning of the looms is a rather slow process but I feel we are getting a very good job done and our efforts will be repaid when we sell the equipment.

We have had several visitors this week and have kept you posted by copy of letter we write in each instance to Hal Byrd in which we set forth the main interest of the visitors. We expect that the number will increase as we get nearer

the sale. Invariably the comments are very favorable, not only as to the type of equipment we have—but the mechanical condition.

We are continuing to see some of our better help and supervisors get placed on other jobs. We still have a long list of those that are drawing unemployment, and find that some who leave for other jobs become dissatisfied because of the job and work conditions. I was glad this week that Mr. Hugh Campbell, who is our preparation overseer and one of two of our supervisors who was not on Mr. Lowry's list, get a job with one of the Erlanger plants in North Carolina. He is to be overseer of carding and spinning. In many instances the salaries offered to our key people are as good or better than we have been paying here. Mr. Bill Goodwin is going over a proposition made to him yesterday by Mr. Alan Sibley which would require his leaving Monday. Should this happen I am contemplating seeing Hal Byrd about getting Bob Wise to be with us for about three weeks before the sale, and take care of visitors who call on us as well as getting everything lined up here for the sale. We received from Lockhart this week some equipment that they are planning to sell along with our equipment. We are cleaning out a warehouse and putting all this equipment sent here by other mills in one warehouse so there will be no confusion as to what is what at the sale. If Bill Goodwin goes I trust that I can arrange with Bill Hawkins to stay with us until after the sale to help us tie up all the loose ends. I was talking to Mac Thornton this morning and told him Wiley Anderson, our cloth room overseer, was available now any time Mr. Lowry's department or another mill wanted to offer him a job. Tom Baker, our master mechanic, has had several offers. He has been invaluable to us during this

General Counsel Exhibit N-74

period of installing the equipment on our spinning, and I think has done an exceptionally good job. Lonnie Dixon, overseer of weaving, is looking after the cleaning of the looms. Four of our second hands have been placed elsewhere and one or two others are pretty well lined up for jobs.

Very truly yours,

J. M. OELAND
Treasurer

jmo-m

General Counsel Exhibit N-75

January 4, 1957

Mr. Roger Milliken
234 S. Fairview Avenue
Spartanburg, S. C.

Dear Mr. Milliken:

I had a call from Mr. Pete Poag this week arranging for a conference with me for Sunday, January 13th and for the supervisors who are being returned to our plant on the 14th. This is all in preparation for the hearing to be held on the 15th in Florance.

In the conversation with Mr. Poag he said that the attorneys for the labor group were requesting copies of our payrolls from September 1st through October 17th. I told Mr. Poag that it would be quite a job to copy these individual records showing the hours and jobs, etc., and that if it was required that we furnish these payrolls it would be better for us to look into having them photostated. He called back and said that Mr. Dyer, attorney for the labor union—or Board, am not sure which, would be here next week and we were to allow him to inspect these payrolls and get off what information he needed; that it might be possible that he would request that we give him those payrolls for a few days in order that he can have his clerk copy off information he wants. We are to take a receipt for the payrolls and deliver them to him. I presume that we shall follow his instructions. We have gone ahead and made four copies of the minutes of the directors' meeting held September 12th at Drayton, stockholders' meeting held October 17th, and directors' meeting held after the stockholders' meeting on the 17th. I am holding these to be delivered to

General Counsel Exhibit N-75

Mr. Poag when he gets here. I am at a loss to understand why they can make any demands and we deliver anything they want while we cannot even be furnished with copies of affidavits of our employees before the hearing. This whole matter seems to be handled on the basis of tying our hands behind our backs and given any kind of treatment. Personally I dread going through such treatment at the hearing. The Freeman representatives are still with us and are checking out machinery sold. This is moving along rather slowly but presume it will gain some momentum as we proceed. I gather that Clarkson Bros. have contracts for the majority of our spinning, carding, and E model looms. I am trying to follow as carefully as possible the removal of this equipment without being unreasonable.

We have sent out our proxies this week and some are being returned. I presume that our agenda for the stockholders' meeting will be pretty much in line with what we have passed heretofore. In a telephone conversation with Mr. Weyer this week the question was raised again about an amendment to the retirement plan that we did not act upon in our directors' meeting in December. It was my understanding that this retirement plan was to be discontinued, and Mr. Kable had suggested that we not pass the amendment. In view of the fact that our minutes are being copied and being given to the labor group there is a question whether the action we might take at these meetings might be carefully gone into before the meetings are held. For instance, you may remember that we have been approving any payments made to Research Corporation, etc. I am wondering whether all of these actions should be analyzed and whether we should proceed as heretofore or change our plans. You may remember at the last directors' meeting we approved certain set aside funds for a pension to Mr.

Nicholson and Mr. Fleming. I wrote this up in the minutes and had a call from Mr. Kennedy in New York that he had discussed with Mr. Poag certain changes with regard to incorporating this in the minutes. I wrote Mr. Poag about it and have not had a reply as to what changes should be made in the draft of these minutes as he had previously approved the minutes as written.

I wrote you about the Internal Revenue Agent after he made a check of our 1954 and 1955 federal income tax returns. He was to pay me a visit this week to discuss some of his findings but as yet has not been back. I discussed with Mr. Kable on the phone twice just what I should do in this discussion and he has left the matter up to my discretion for the preliminary discussion.

The auditors have completed their audit. There is a reserve for liquidation fund of $350,000 set aside on the balance sheet. This is in line with Mr. Kable's approval. We are today preparing a period and report for the period closing December 29th. If there are any questions you have on this report we will try to answer them. You will note that it is nothing more than a skeleton report of items of expense charged where we would consider they were applicable.

Very truly yours,

J. M. Oeland
Treasurer

General Counsel Exhibit N-77

REPORT OF OPERATIONS

Period Ending 7/8/56

1. Sales for period—Net	$ 409,846.
Planned sales for period ..	478,000.
Over or (under) planned ..	(68,154.)
Sales this year to date	$3,691,220.
Sales last year, same periods	3,971,497.
Over or (under) last year ..	(280,277.)

	Period	Year to Date
2. Profits for period, subject to taxes	$ 9,477.	$139,349.
Planned profits for period ..	20,000.	162,000.
Over or (under) planned ..	(10,523.)	(22,651.)
Profits last year, same periods	$ 26,966.	$183,382.

Comments: You will note above that our period sales were under planned by $68,000.. This is further reflected in an increase in our cloth inventory and lower profits then expected. With the vacation period at the finishing plants arrangements were made by the New York office—for some of our customers to delay the billing of the goods. We are hoping that this will be adjusted in the period we are presently in.

We are listing below the extraordinary expenses for the period in question. In addition to this the period profits were affected by the increase in accrual for payroll taxes

and Workmen's Compensation insurance to take care of the vacation payment made during the period. This addition amounted to about $1500. Extraordinary items are:

Twenty-six inch loom beams—E model looms	$5,388.50
Balance due on Roberts double apron system 16 warp frames	1,874.26
Fluorescent light fixtures new supply room	472.36
Additional warp paper tubes	703.24
Parts to widen stitchers and scrays for 50" looms	385.00
Bricking boiler room	567.30

3. Estimate of sales & profits for next three periods:

	Sales	Profits
Period ending 8/ 5/56	$476,000	$19,000
9/ 2/56	471,000	18,000
9/30/56	463,000	17,000

Comments: We are preparing this week a new projected profit. We are planning on reflecting in this extraordinary items of expense like the Duo-Roth on 80 frames of warp spinning; Dixon front rolls on the same spinning; 38" aluminum warp beams; 15" cans change over on finisher drawing. We are certain that these extraordinary items are going to mean that we will show very little profits for the balance of the year.

4. Number of weeks production on order: 8,197,000 yards, equal to 15.6 weeks production.

Comments: Goods we sold during the period were mainly a large order for Stein-Tex of 109's in the first quarter next year. We have sold about 40 per cent of our production for third and fourth quarters and we are hoping after the holiday period we will have an improvement in demand for goods we have available.

5. Inventory of cloth 1,792,353 yards, $367,347. This includes goods applied and on order, and goods for sale. We have 860,000 yards of stock on hand for sale, which is equivalent to 1.6 weeks production.

No comments.

6. Planned operating schedule: 144 hours per week.

Comments: We are having excess warp yarn on our present balance. In styling our looms we anticipated having this condition hoping that we would have yarn available to fill up our loom beams for the 50" looms as they were installed. We ran into a snag this week on this installation. We let the contract for fixing the old supply room space, amounting to about $39,000. The contractor called and said because of the steel strike he was unable to cover necessary steel for posts and beams. We have been unable to plan any sales on these looms, and rather than pay the contractor $2000.00 extra for the steel in the grey market we decided to ride it out for the present hoping that the steel situation would soon improve. The looms are scheduled for delivery the last of this month or first of next. The contractor said that it would take 60 days to complete his work so this means it will probably be three months before we have the looms in operation. We are running our warp spinning from one to two shifts a week less than the 144 hours as we find we are unable to sell any warp yarn. This condition is affecting our card room production also, and we are cutting down this department to less than 144 hours.

7. Long or short position of raw materials inventory on hand and on order: 701 Bales long.

General Counsel Exhibit N-77

Comments: During the period in question we have purchased 1400 bales California cotton in the government sales transaction and 1000 bales of Memphis. You will note that we are still in a slightly long position even though we have the 5700 bales of futures sold. We are working with Mr. Truluck on the delivery of about 5000 bales due on various contracts in August. We are hoping that his plans will mature where he can handle the grading and weighing of the cotton at the Cotton Blossom warehouse, delivering to us so that we can stack the cotton immediately to help our warehouse situation here. All this cotton we have bought is fixed at an average of around 35.50 cents.

* * *

Reports of Overseers edited by Mr. Goodwin

8. A. Projects Accomplished to Improve Quality:

CARDING:

1. Our cotton mix is now 8 per cent Eastern, 28 per cent Memphis and 64 per cent California. We are almost out of Eastern cotton and we are running low on Memphis.

2. The responsibility of correct cotton mix has been assigned to the card room. Carding supervisors check each bale of cotton opened to see that it is the correct grade, staple, growth, and spinnability. Also the bales are checked for false pack, mildew, tar contamination, or any other damage at the same time.

3. Our lap conveyor is working satisfactorily, however, the ceiling fans are not giving satisfaction. The fans tear up the laps by blowing across and sucking across the laps. At the present time we are not running the fans as American Mono-Rail is to come down and work out this problem for us.

General Counsel Exhibit N-77

MACHINERY MAINTENANCE:

Due to special spinning checks we did not have the regular amount of machinery checks during this period. Here are the results of checks that were made:

	Amount Inspected	Average Demerits
Cards	9	113
Drawing	4	19 per delivery

The card room maintenance man is starting another cycle on cards. This cycle plus one more will allow us to complete the overhauling of our flat drive assembly. We can then start on reducing minor demerit items.

Lee Hall, the card room maintenance man has put grease fittings on the studs on a lap roll gear train bracket. His idea is to grease on a less frequent schedule but to reduce wear and replacement on gears and studs.

We are putting grease fittings in picker studs and this is helping us to reduce breakdowns. The dust in the picker room tends to choke up oil holes. These grease fittings and proper greasing should help to reduce our repair part cost.

SPINNING:

1. Have lined up two warp doffing assignments so as to get the maximum running time from each frame. and also that we might get a more uniform package size. This has increased efficiency at least 5 per cent on warp.

2. Have checked for and taken off all old 2" rings that had gotten mixed with new 2" rings. This was causing soft yarn and in turn causing it to slough at spooler.

3. Have changed the oil being used on lifter rods from liquid molly to lard oil. This has almost eliminated stuck rods.

Preparation:

SPOOLING & WARPING:

1. Cleaned and overhauled elevator belts which drive spoolers Nos. 1 and 2.
2. Recalibrated and cleaned and overhauled all snick-plates on spooler #2.
3. Overhauled clutch on warper #1.
4. Overhauled drum brakes warper #2.
5. Reversed and lowered cleaning brushes on quill cleaners Nos. 1 and 2.

TYING AND SLASHING:

1. Buffed dresser roll slasher #2.
2. Overhauled size level controls slashers Nos. 1 and 2.
3. Installed heaters under size box, covers slasher #1.
4. Overhauled beam friction slasher #1.
5. Buffed dresser and squeeze rolls size box #1, slasher #1.
6. Installed bearings on dresser roll slasher #2.
7. Replaced shear pins and adjusted immersion rolls slashers Nos. 1 and 2.
8. Overhauled delivery roll assembly and yardage clock slasher #2.

9. Cleaned, oiled and inspected tying machine #2 replacing all worn parts and made necessary adjustments.

WEAVING:

1. The shop has completed the removal of all overhead pipes that were not in use—which will enable us to do a better job on overhead cleaning.

2. We have installed six vibrator lease rods on X looms and we hope to get some loom stop checks on these in the near future so we can determine if they will lower our loom stops.

3. We are having all batteries and RH box plates gone over and thoroughly cleaned. This will be continued at each warp-out, and it should improve the breaking filling on change. We have changed 215 looms to 26" beams to date.

4. We are having the second hands check the relative humidity every four hours. We hope to get some recorders for the E-room, and we already have recorders in the X-room.

5. The trial of the 8¾" bobbins looks very promising on the 42's yarn. Additional bobbins have been ordered to expand this trial. Along this line it has been requested that our new looms come equipped for 8¾" bobbins.

6. We have put on six new type dent reeds from Steel Heddle. This type reed is much stronger and will reduce reed marks in the cloth. While this type reed is more expensive the cost is offset by improved quality.

General Counsel Exhibit N-77

7. We have changed our looms entirely to the plastic walled shuttles. The cost is 50 per cent more than a dogwood shuttle but the life of the shuttle has increased about 75 per cent.

8. We also have started to use the new Gatos Texhide pickers which is double the price of our old picker. This gives us the same cost with the increased life of the picker, but has benefits in less changing, etc.

Projects Under way and Planned to Improve Quality:

B. CARDING:

1. We are waiting for a decision as to whether or not lap conveyor track will be moved so that we will know where to locate fly removal pipe.

2. We still have not heard from Gossett concerning our oscillating drawing clearer. I will request a delivery date from Gossett as we are very interested in getting this clearer.

3. The shop is preparing to install a can conveyor in one card alley. The entire card room is extremely interested in this conveyor.

4. The shop is putting a larger control switch in opening room. This should eliminate the sticking of contacts and other electrical trouble we have in opening room.

5. The Research Corporation made several good recommendations on maintaining the proper machinery file. These recommendations will be carried out completely.

6. We have a set of top slack roll bearings (for picker) that are roller bearings. As soon as the shop can

complete the machinery we will put these bearings into use.

SPINNING:

1. We plan to line up all warp and filling doffing assignments as nearly as possible as the two outlined assignments as mentioned in 8-A.

2. Have checked builder motion parts, replacing all worn parts and corrected anything that would cause the ring rail to dwell. This has improved our tangled yarn at spooler and also wild yarn at warper, which means a decrease in wild yarn at slasher and weaving.

PREPARATION: Spooling & Warping:

1. We plan to replace and adjust thread clamps, detectors, spindles and supports of spoolers 1 and 2.

Slashing and Tying in:

1. Buff dresser and squeeze rolls slasher #1, box #2.
2. Buff Squeeze roll—slasher #2
3. Rewire dry fans Slashers 1 and 2
4. Install cleaner blowers over fronts of slashers 1 and 2.
5. Clean, oil, and make necessary adjustments tying machine #1

* * *

8. C. Allowances Made During Period:

Comments: We are having visiting us today Red Shortvall and Billie Davis in regard to quality. They are going to discuss with us the complaint on 4000 yards made

by Mill Fabrics. These goods were delivered to the customer in February, March and April of this year. Some of these goods were returned to us and we have looked them over. We sold this customer something over 800,000 yards at this time and have received complaints on around 8000 yards, mainly for warp streaks.

D. Percentages of first quality on periods production:

Mill totals	94.75%
Last period	94.75

Increase-Decrease—

No comments.

E. Loom efficiencies:

Week ended		6/16	6/23	6/30	7/7	Totals
Loom	E	90.00	90.80	91.10	90.20	90.53
	X	88.40	89.10	88.00	87.70	88.30

Mill average 89.60 per cent

Comments: We are glad again to note some improvement in loom efficiencies. The weave room on the whole has run better during the last period than it has for some time.

* * *

Mr. Hawkins

* * *

9. A. Expense Reductions Accomplished:

1. One filling spinner per shift was eliminated due to pneumafil, 12x6½ creel package, and octopus cleaners.

2. Wendell McGowan, the co-op student from Georgia Tech, has returned to school after having spent the past ten weeks studying warp tensions and their effects on the weaving efficiency of style 333. During this study he used the Brush Tension Analyzer for tension measurement and produced some worthwhile results. Through increasing the warp tension from the previous production level of 15-20 grams to 35-40 grams a decrease in warp stops of 0.18 stops per loom hour resulted. The possible potential savings on a decrease of 0.18 stops per loom hour is approximately $23,500 per year for the looms currently on our style 333. We are continuing this work and its application throughout our weaving.

3. Moisture content for the last shipment of starch was tested and the weights were within the manufacturers guarantee.

B. Expense Reductions Planned:

1. We are starting a program to measure the yards on our filling bunches and report the results to the overseer by frame number and doffer.

2. Our cloth bale weights are being followed more closely by the application of control limits. When a bale weighs out of limits it is rechecked for yards and weight.

3. We have begun studying our quill stripper job and anticipate it being nearly completed next month.

4. We plan to begin a restudy of our roving hauling and spinning sweeper jobs next period. These jobs have gotten out of line due to spinning and roving changes.

General Counsel Exhibit N-77

5. Last period mention was made of the investigation our laboratory is making into roving draft distributions. It was thought that a decrease in the back or break draft of our Saco-Lowell FS-2, 10x5, 1.80 hank roving frames would improve the quality of our roving, yarn, and decrease ends down in spinning. We mentioned also that we had changed from a break draft of 2.37 to a break draft of 1.66 based on roving non-uniformity results. After checking the results of the yarns made from each of the seven test roving draft distributions, two of these stood out as being better than the others tested. One of these was the 1.66 back draft mentioned above, and the other a back draft of 1.80. We are currently testing larger samples of this roving for yarn quality and ends down in an effort to select the best roving draft distribution for our spinning.

6. We have been using a 15's warp yarn with a twist multiple of 5.00 for our selvage construction in weaving. In an effort to decrease this twist and improve the breaking strength we tested this yarn against a 15's warp with a twist multiple of 3.45. This lower twist is equivalent to the twist in our current production 31.5's warp as computed by the "Universal Precent Twist System" as approved by I. T. T. We found a loss in single end strength in the lower twist yarn before and after slashing. The possibility of another twist multiple, higher than 3.45 and lower than 5.00, giving a stronger yarn is being investigated and tests will be run on a twist multiple of 4.10 to 4.20 as soon as practical

7. We are currently testing each of the Whitin 12x6½ roving frames for weight variations

caused by incorrect tension as recommended in a recent I. T. T. study. A Whitin representative has visited the plant and is to return to change the lay tension and botton cone gearing to correct a portion of this excess weight variation, especially at start-up.

C. Job Assignment Changes Accomplished:

1. Saco-Lowell filling spinners were reassigned and one job absorbed per shift.

D. Job Assignment Changes Planned:

Present permanent jobs	$ 461.25
Permanent jobs last period	464.25
Net gain	3.00
1956 goal	406.50
Savings this period	$ 5,897.00
Accumulated this year	$144,824.00
1956 goal	348,225.00
Balance to accomplish goal	204,401.00

E. Projects completed:

1. Job calculations were completed on all standard spinner jobs and given to the overseer. This included graphs charting standard assignments at various ends down levels.

2. An additional kind of spooler test has been started which evaluates for quality performance the warp doffer, spinner, and section man. This check is helpful in (1) spotting poor piece-ups, cleaning and creeling by spinner; (2) checking doffer strips and yarn tails on full bobbin, and (3) evaluating section men for sloughs and tangled frames.

3. Our 15's selvage yarn was speeded from 135 to 167 RPM

F. Frequency Check Averages:

	Last Period	Accumulated this year
Breaker drawing-Brks/hank	.584	.609
Finisher drawing " "	.468	.352
1.80 HR-Brks/100 spdl. hrs.	2.93	2.21
1.10 HR " " " "	5.74	4.44
31's Warp ends down/M.S.H.	46.5	51.0
33's Filling " "	66.8	55.3
42's Filling " "	44.6	50.8
Spooling—per cent tailings	20.0	22.1
Warping breaks/10,000,000 end yds.	8.72	8.17

Loom stop averages:

Style	Warp	Filling	Misc.	Total	Accumulated this year
S/333 E Broadcloth	1.13	.45	.50	2.08	1.91
S/417 E Print	.36	—	.07	.43	.48
S/333 X Broadcloth	1.09	.56	.36	2.01	2.00

* * *

10. Research projects. No comments.

11. New York office. No comments

12. Plans for new styling or fabric development. No comments.

13. Personnel:

A. Promotions. No comments.

B. Number of trainees hired. No comments

C. Key personnel who have quit.

General Counsel Exhibit N-77

14. Machinery:

A. Bottlenecks. No comments

B. New machinery being investigated. No comments

C. New machinery on order. No comments.

15. Trips. No comments

J. M. O.

Respondents' Exhibit N-3
(pages 49-50)

"THE ROLE OF FACTORING IN MODERN BUSINESS FINANCE"

by

Clyde William Phelps

3. *Advisory Services to Clients*

Throughout the centuries, factors have always performed an important function in extending advice and counsel to their clients on matters affecting profitable operation. The modern factor supplies his client with information and advice not only on financial problems, but also on design or styling of product, marketing conditions, production, and sales.

The large or giant firm can afford the expense of maintaining its own research department to study such problems. But the small or moderate-sized firm is not in such a fortunate position, and may profit from the information and counsel extended by its factor.

The varied nature of the services which a factor may perform for his client in connection with the advising or counseling function are indicated in the following statement.

> (a) Because factors are in a better position to obtain credit information than are most individual companies, they can help a mill to expand to new territories and accounts about which the mill might have little knowledge.
>
> (b) Some factors will conduct market studies to determine if a mill is getting its share of the market, and, if not, to find out why and suggest corrective measures to the mill.
>
> (c) Being familiar with the industry and having a broader outlook on the economy than would most individual companies,

factors can be helpful in advising mills on general economic conditions and trends.

(d) Some factors have been instrumental in rendering mills' distribution setups more efficient.

(e) Progressive, reliable factors seek to aid their accounts on the basis of *personal* service, almost as a management consultant. In addition to helping a mill in long-range financial planning, they will counsel with clients on production, sales, and distribution plans. They may assist with organizational matters, show a mill how to streamline its office procedures, or help in setting up a budget.

(f) They have helped with work load analysis and other industrial engineering functions. They have surveyed mills and advised on machinery replacement and modernization programs.

(g) Some mills have also found factors useful in establishing contacts, for example, with a good selling agency, because of their wide acquaintanceship. One factor recently found a foreign buyer for idle full-fashioned knitting equipment belonging to a client.

(h) In addition, factors help arrange banking connections, may offer suggestions on tax matters, pension plans, trust funds for company officials, etc. Much or all of this counseling is provided free of charge.

(i) Finally, there is the personal angle. Friendship is not apt to play much of a role in ordinary lending operations, but the close relationship that often develops between a factor and his client is one of those intangibles that can sometimes be literally worth a blank check.[62]

As indicated by this detailed listing, these services are specific, rather than general, in nature. For example, the factor knows the amount and the trend of his client's sales for each section of the country. He may compare these figures with those from government and other sources showing the total sales volume and trend for the industry as

a whole in each section and nationally. He is in a position to provide his client with valuable information applying particularly to his situation and to offer specific suggestions and counsel.[68]

The advisory services which a factor renders his client are not "gadgets" conjured up merely as having possible "sales appeal" to clients. The continuous research is undertaken and the vast amount of up-to-date knowledge on problems, trends, and opportunities in the industry is built up in the first instance as a protection for the factor, himself.

The factor is risking millions of dollars in approving credits to a multitude of concerns throughout the country who are customers of his client and of the industry in question. The thorough and current knowledge of all aspects of the industry—including financing, styling, marketing, production, and sales—which the factor gets for his own benefit is of specific value to his client as well.

General Counsel Exhibit O-1

July 20, 1956

Mr. George Rankin
Gaffney Manufacturing Company
Gaffney, S. C.

Dear George:

At one time I put on a night supervisor and there was always some question as to where to draw the line on the man's authority over the night second hands and to what extent he may be responsible to the overseers. The man I had on this job left the mill and I didn't replace him and find that when I had a man, he served a very real purpose.

I am now contemplating putting on a man next month and knowing you have used such a man to good advantage, I would appreciate your sending me a brief outline of the man's duties, amount of authority he has, and to whom does he report.

Thank you for your cooperation, and I shall look forward to hearing from you.

Sincerely yours,

W. A. GOODWIN
W. A. Goodwin
Production Supt.

General Counsel Exhibit 0-2

McCORMICK MILL

McCormick, South Carolina

DATE: March 27, 1956
TO: Southern Personnel Managers
FROM: James R. Morrow
SUBJECT: Personnel Meeting

CC: Mr. Roger Milliken
Mr. K. M. Lowry
Mr. C. G. Johnson
All Treasurers, Managers, or Superintendents

Our next D. M. Personnel group meeting is scheduled at Pacolet #3 & #5, Thursday, April 12, 1956 at 9:30 A. M. Our morning session will be taken up in discussion of any questions that you might have regarding any subject concerning our work. I am sure there are many things we would like to discuss, therefore, in order to have them in digest form I would like for you to send them to me as soon as possible.

You have already been notified that Mr. Harvey Driscoll, Regional Representative of the U. S. Department of Labor, Bureau of Veteran's Reemployment Rights, will speak to us in our afternoon session.

Anyone desiring overnight reservations should write to the Cleveland Hotel, Spartanburg, South Carolina.

J. R. M.

JRM:ks

General Counsel Exhibit O-3

McCORMICK MILL
McCormick, South Carolina

DATE: April 16, 1956
TO: Southern Personnel Managers
FROM: James R. Morrow
CC: Mr. Roger Milliken
Mr. K. M. Lowry
Mr. C. G. Johnson
All Treasurers, Managers or Superintendents

SUBJECT: Minutes of D. M. Personnel Meeting at Pacolet #3 & #5, April 12, 1956

The Chairman, Mr. J. W. Green, Excelsior, Union, presided. Mr. Holland, Superintendent, welcomed the group and made some very interesting comments about the days at Pacolet before they had a Personnel Department, and pointed out how important his Personnel Department is to him.

The minutes of the last meeting were read.

After a discussion concerning the safety suggestion contest it was decided to report to Mr. Paul Wilson that the idea of the contest is very good, however, any future contests should be so worded as to be either for slogans only or for safety ideas which can be put to use.

The safety film committee reported that they had progressed so far as to have the script written by Mr. Gene Permenter of Liberty Mutual and that this subject concerns a spot of oil on the weave room floor, and that the film points out that minor hazards should be reported immediately. This film is ten minutes in length and is in color.

Mr. Green then introduced Mr. Gene Permenter of Liberty Mutual Insurance Company who listed to us the services rendered by Liberty Mutual.

1. Chief Engineer's Office
   a. Vibration

General Counsel Exhibit O-3

b. Structures

c. Special unknown problems

2. Industrial Hygiene
   a. Vapor
   b. Dust
   c. Chemicals
3. Accoustical Engineering
   a. Noise
   b. Loss of hearing
4. Medical Department
   a. Preventive medicine
   b. Rehabilitation
5. Chemical Laboratory (Analysis of toxic chemicals)
6. Mechanical Guard Laboratory (Designs machine guards)
7. Fleet Engineering (Solves parking problems in more heavily industrialized cities)
8. Public Liability Specialist (Makes exit surveys, etc.)
9. Electrical and Public Utilities
10. Motor Transport Department
11. Aircraft (Makes spot checks of company owned aircraft)
12. Elevator Inspection (Twice a year)

He then pointed out how the Servicing Engineer operates when he visits our plants. The basic plan being:

1. Get the facts
2. Analyze the facts
3. Select and write down problems
4. Plan the action
5. Put the plan to work
6. Follow up
7. Submit progress report

Mr. Permenter pointed out that any plant needing more visits by a Servicing Engineer should write to him at 199 North Church Street, Spartanburg, South Carolina.

Discussion of College Trainees:

Several mills desire trainees, but report that they are having difficulty in obtaining these men. Mr. Thornton of the Placement Department pointed out that a new plan of inviting trainees is being discussed and if adapted will be distributed to all mills. Mr. Thornton further stated that we would receive a suggestion that each trainee be sponsored by some Supervisor, such as, a Department Head in production department. The treatment of trainees when they visit with us is generally the same from their arrival to their departure. Mr. C. G. Johnson will be requested to attend the Fall meeting to fully discuss recruiting of trainees and trainee pay. It was agreed that Liberal Arts graduates are as well accepted as technical men.

Mr. Harvey Driscoll, Regional Representative, U. S. Department of Labor, Bureau of Veterans' Reemployment

Rights, Atlanta, Georgia, spoke to us in the afternoon session on Veterans' Reemployment Rights and discussed case histories that have been handled by his office and gave to each person present a copy of the Reemployment Rights handbook. The meeting was then open for questions. These questions and answers are found in this handbook.

Colonel Claude L. Bowen discussed the Reserve Forces Act of 1955. It is briefly outlined below:

* * *

The Fall meeting will be at Gaffney Manufacturing Company. The tentative date being the first part of October.

J R M

JRM:ks

General Counsel Exhibit O-4

DARLINGTON MANUFACTURING COMPANY
DARLINGTON, S. C.

Date: January 21, 1956

To: Mr. R. C. Edwards
Mr. J. J. Morton
Mr. I. S. Pitts
Mr. Alan Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

From: J. M. Oeland

We here at Darlington are finally getting around to writing our policies. We are having the help and advice of Charlie Johnson, and we would appreciate it very much if you would be willing to send us a copy of your policies on the subjects listed below. These policies, of course, will be used by us as a guide, and we would like to keep them in our files unless you feel you would like to have them returned, which we would be glad to do at your request.

Regulations and dismissal for cause
Solicitations
Shift assignment and promotions
Leave of absence
Exit interviews
Safety organization
Special safety requirements

J. M. O.

General Counsel Exhibit O-5

December 21, 1956

Mr. Roger Milliken
234 S. Fairview Avenue
Spartanburg, S. C.

Dear Mr. Milliken:

I have received your letter and will follow your suggestion of leaving in the warehouse all customers' goods until we turn over the building to the purchaser. I am very hopeful that most of the goods will be gone after the first week in January. We received from New York this morning shipping instructions on a good many bales to be shipped after January 3. Riegel Textile has here with

* * *

Several of our supervisors have accepted jobs other than with D.M.I.E.D. or Research. Tom Baker, our master mechanic, decided to go to Monarch Mills; Bill Hawkins is going with Sonoco Products; James Sessoms is going to Sonoco; Jack Hancock to Darlington Veneer Company and W. W. Anderson to Springdale Mill at Laurel Hill, N. C. We have only one man here who will go to D.M.I.E.D. for the 90 days to see if he can be placed elsewhere. He is James Anderson the warehouse foreman. C. L. Watford turned down an offer from Monarch Mills and will be here for January and part of February, at least, as we complete getting our records in shape to pass on the someone else at a later date.

General Counsel Exhibit O-5

It is needless for me to say that I am certainly very sorry for the turn of events in the year. I am sure it has been a source of much worry to you, and it is too bad that it could not have been avoided.

With best wishes for the Christmas Season, I am

Yours truly,

J. M. Oeland
Treasurer

General Counsel Exhibit O-6

REPORT OF OPERATIONS

Period Ending November 27, 1955

* * *

6. Planned operating schedule: 144 hours per week. No comments.

* * *

Report of Operations

Overseers' Reports Edited by Mr. Goodwin:

* * *

4. We are having the smash hands keep record of all bobbin and slam-off breakouts so we can determine if any of our looms are out of control.

5. The shop has installed 3 humidity recorders in E and X model rooms to help keep a more constant humidity. We have also added 3 humidity controls in the X model room to get a better distribution of humidity.

* * *

9. All weavers have been instructed again about running more than one end in dropwires and crossing ends behind warp.

* * *

8. B-1 Measures Accomplished and Under Way to Help Prevent Accidents:

1. Guards were put around the No. 12 openers. This eliminates a bad accident hazard in the opening room.

General Counsel Exhibit O-6

Report of Operations

Comments: You will note from the above figures that we are still experiencing a lot of trouble on our X model looms. This trouble is localized on 260 looms that are on 3.90 poplins. It is further localized by the fact that all poplin warps are coming from one slasher where we have experienced so much trouble installing a Griffin size box. Other styles in the mill are running fairly well, and I believe if we could give the proper attention to the looms that the efficiency would be nearer where we had it around 90 per cent. We think we have at last corrected the trouble on the slasher in question. This has only been accomplished in the last few days and it is too early to answer yet definitely that the warps coming from the slasher would be better. All indications are that they will be improved. This confusion has caused us a great deal of concern. It is my opinion that in our attempts to get the weaving to run better, and changing the humidity back and forth, has not helped us any. The poplins are running so badly the weavers are out of heart, and it is causing them to use practices that are not good. We have given them some additional help this week and are paying the weavers on the poplins in line with the average pay received by other weavers on other looms in the mill. We still have several weeks of bad running work as the warps made during the period when the slasher was not properly running will have to be run off before we get started back on improving the loom stops. It is my opinion that we are receiving definite help from Mr. Campbell who we have employed in our warp preparation. I feel the tide is turning and that we will see improvements.

General Counsel Exhibit O-6

Report of Operations

1	Second hand	$ 4,500
1½	Bobbin machine operator	3,780
1	Oiler-Taper	2,830
6	Spinners	20,500
6	Doffers	22,100
1	Cleaner	2,885
3	Slasher Tender	8,900
36	Weavers	135,400
12	Battery hands	34,000
6	Smash hands	17,950
6	Warp man	18,700
1	Quill hauler	2,540
1	Quill machine	2,510
1	Blow off hand	2,725
3	Harness cleaner	8,100
1	Pick clock repair man	2,780
3	Loom fixer	12,200
3	Elevator man	7,700
1	Machinist	4,075
	TOTAL POTENTIAL FUTURE SAVINGS	$348,225

Number of jobs:

Present Period	510½
Previous Period	513½
Net Gain	3
Goal—1956	406½

* * *

General Counsel Exhibit O-6

11. New York office:

Comments: We had a call from Al May yesterday in regard to some 40" 80x72 4.16 printcloths which is an 80 square with fewer picks. The customer wanted to buy 600,000 yards for the first quarter and Monarch was unable to deliver any more goods. This morning I got in touch with Mr. Sibley and he agreed for us to take this business as well as any 80 sq. for first quarter as he was pretty well sold up. We are doing this with the understanding that we will not compete in price with Monarch on this construction, and will make this change for the first quarter looking into sales for the second quarter on a competitive basis with Monarch. If we can make sales on the 80 sq. styles it is our plan to put 253 looms on this. This is a block of E model looms that we have in the upstairs weave room which do not have any auxiliary cam shafts. This move will be helpful to us in relieving the weavers' situation by putting 80 to 100 looms to the weaver on these styles. We then can eliminate some of our submarginal weavers who have been trained in recent months and improve the entire weaving operation, we hope. I certainly trust that this move can be made and get ourselves in better position.

* * *

13. Personnel:

A. Promotions: No comments

B. Number trainees hired: No comments

C. Key personnel who have quit: No comments

* * *

General Counsel Exhibit O-6

14. Machinery:

A. Bottlenecks:

Comments: We are studying anew our bottlenecks with the idea in view of putting more warp frames on 150 front roll speed. At the moment we are having trouble in getting equipment to install creels that will take our 12x6½ roving. These creels have all been installed on the Whitle and 16 on the Saco-Lowell frames that are on filling. We still have 32 more frames to equip with pneumafil open creels. We are having a very hard time getting the equipment here to make this installation in time to take advantage of the 12x6 frames that have all been installed and are presently running. We are looking at our spooling and warping and by some changes we can get the production of the spinning room through this department. If we make sales of 80 sq. as noted above it will mean that we will have some warp yarn available for sale. We are studying our position in this matter should we make the sales on 80 sq.. and try to line up sales for the extra warp yarn we will have available after the first of the year.

B. New machinery being investigated: No. comments.

C. New machinery on order. No comments.

General Counsel Exhibit O-7

REPORT OF OPERATIONS
Period Ending January 22, 1956

* * *

6. Planned operating schedule: 144 hours per week.
Comments: Our weaving production has improved, and with the loss in production in the spinning room referred to above we have not been able to operate at full 144 hours in our weave room. It now looks like we are on the road to getting this corrected, and we are anticipating running the full 144 hours in the weave room as well as delivering to Monarch about 10,000 pounds warp yarn a week.

* * *

8. A. Projects Accomplished to Improve Quality:

* * *

2. In the last period we eliminated one roving section man and the first shift second hand. We have encountered some trouble in this change but we are rapidly overcoming this.

* * *

SLASHING * * *

3. We completely rearranged all the racks in the room to save time for the warp men and to make ready for the automatic section beam lift.

* * *

WEAVING * * *

2. We were able to eliminate 2 oilers in one room.

3. We have taken out six battery hands due to style change, and by increasing the bobbins/hour from 520 to 650.

4. We did not get delivery of the new quill strippers as planned, so it was not possible to eliminate the two quill haulers.

5. We have been able to reduce the weave room humidity to 78% in one room due to the new controls and raising the humidity lines.

* * *

SPINNING:

6. We hope to have the new type bobbin stacker installed next period which should enable us to increase the doffer's assignment as the bobbins will be stacked in the box all in the same direction.

7. Installed the new system for doff boxes and spring bottom bobbin boxes. This allows us to take out three doffers. It necessitated putting in to yarn men, however, for hauling yarn.

8. We installed a new system of follow-up on bad doffs by having each doffer fill out a slip with his name and the frame number. Following this closely should be a help in getting better warp bobbins and increase spooler efficiency.

* * *

WEAVING: * * *

2. Plans are ready to start a maintenance man in the weave room.

* * *

General Counsel Exhibit O-7

SAFETY:

1. Mr. Goodwin has organized a new safety program. Under this program the Carding Department has charge of the weekly safety meetings for the month of January. The following topics have been discussed during these meetings.

   a. Importance of Safety

   b. The desire of management to have a safe plant for employees.

   c. Repeater type of accidents.

   d. Investigation of lost time or medical accidents

   e. Falls

   f. Injuries to eyes

2. The following subjects will be discussed during the next two weeks:

   a. Successful safety programs in other plants

   b. Management's decision on suggestions from previous meetings

   c. Any lost time or medical accident that has occurred this period

   d. Any other safety ideas the committee have for improving safety conditions in our plant.

* * *

General Counsel Exhibit O-7

Report of Operations

* * *

(W. S. Hawkins)

9. A. Expense Reductions Accomplished

Two weavers per shift were eliminated due to style change to semi-feeler goods.

The battery hands have been temporarily assigned on a 650 quills per hour basis pending the outcome of methods studies which are continuing. This assignment basis plus restyling to lighter yarn counts has reduced our jobs by 2.5 per shift.

The first shift card room section man and the second hand jobs have been eliminated.

The warp doffer jobs have been reduced by one per shift due to methods changes and the addition of two yarn men.

The filling doffer jobs have been reduced by one per shift due to yarn count changes.

We had one machinist to resign. We do not plan to replace him.

Two weave room oilers were eliminated.

One tailings hand was eliminated.

Two roving tenders were replaced by two bad work hands.

B. Expense Reductions Planned

The drawing frame changeovers were delayed due to delivery of creels. These are now installed and a reduction of 33 per cent in tenders will be made next period. One creeler will be eliminated next period when the 10x5 roving change is completed on all frames.

Our new quill strippers have held up the reduction in personnel planned for this installation. Delivery is promised for the week of January 23rd. We expect to eliminate 2 jobs with this equipment.

We, plan to increase our loom assignments on several styles due to reduction in stops.

C. Job Assignment Changes Accomplished:

The 10x5 roving piece rate was installed.

The three 12x6½ roving piece rates were installed.

The warp doffer piece rate was adjusted.

Two print cloth styles were installed in the weave room on a piece rate.

Report of Operations

D. Job Assignment Changes Planned:

3 Drawing tenders	$ 9,850
1 Creeler	2,933
1 Quill hauler	2,540
1 Quill stripper	2,510
3 Weavers	11,298
	$29,131

Present permanent jobs	482
Permanent jobs — previous period	505 ½
Net gain	23 ½
1956 Goal	406 ½

Savings this period	$82,708
Accumulated this year	98,041
1956 Goal	348,225
Bal. to accomplish goal	250,184

* * *

General Counsel Exhibit O-7

13. Personnel

A. Promotions:

Comments: We had one of our Clemson boys who had been promoted to second hand in spinning room to quit this week. He could not adjust himself to the pressure of handling the job, and decided he would rather quit than be placed back on the job he did run of our machinery inspector. The man that we presently have on the machinery inspection has done an exceptional job and he is being transferred to the spinning room as second hand on the third shift. We are putting in his place a High School graduate who has been with us the past two years in our spinning room doing overhauling and maintenace work. Here again he has shown exceptional ability to do precision work and we feel that he will very well fill in the job on the machinery inspection program, and give him further training for promotion in all departments. His brother, Walter Sessoms, is a senior at Wofford College. They are both fine boys and we are very interested in pushing Ted along here as he decided not to go to college.

B. Number of trainees hired:

Comments: Carl Zimmerman, a Florence boy who has been working with us during vacations several years, has graduated at Clemson this week and is coming to work Monday morning as a maintenance man in our weave room.

We think a lot of Carl, and have worked him in all departments — and in no case have we found that he did not measure up to our confidence in him. It is my opinion that he very soon could be worked into a second hand job. This we are contemplating doing. The only fly in the ointment is that he has to go through a period of military training.

We are going to push him along here regardless of this and get him as far as we can.

C. Key personnel who have quit.

Comments: I told you when you were here that Oscar Fleming, our Master Mechanic, was planning to go into business for himself. This week we have employed Mr. Jimmy Wells, a second hand in the shop at Gaffney Manufacturing Company. Joe Norton was kind enough to let us talk to Jimmy and he has accepted the position here at Darlington. I had a phone call from Russell Bush who was looking for a man for us and he recommended Jimmy very highly. We appreciate very much Gaffney's working with us in this matter, and are looking forward to getting Mr. Wells located here. We feel that he will materially strengthen our organization. He plans to come to work about the middle of February.

* * *

General Counsel Exhibit O-8

REPORT OF OPERATIONS

Period Ending March 18, 1956.

* * *

6. Planned operating schedule: 144 hours per week

Comments: We are anticipating the regular 144 hours a week production schedule. We are making a drive to complete within the next three weeks all the work we are presently doing in our spinning room. The cost of this work is running around $1000.00 a week and covers the following items: extra cleaning crews to keep up with our scheduled cleaning program; installing of Pneumafil on 48 Saco-Lowell frames; complete changing of the new lifting rods purchased for warp spinning; completion of the double apron system on 16 warp and filling frames.

On completion of the work in the spinning room our production will be materially helped as we have so many frames stopped each day with crews working on them. We are very encouraged by the improvements in ends down where we have completed the work. We had one check this week on a spinner's set averaging 30 ends down per 1000 spindles. We are anticipating as you will notice elsewhere in this report, further reductions in job assignments. I am further confident we can help our spooling and slashing costs by having sufficient warp yarn available. We in turn will need this warp yarn as we are putting on the 26" loom beams on our E model looms, which ties up additional inventory.

* * *

WEAVING

1. We had a representative from the Titan tying machine company to spend some time with each of

our typing and warp preparation men. He gave each of them some very good points on preparing the warp for the tying machine. They are now doing a much better job.

* * *

4. We are going to lose our weave room maintenance man and we are now planning to train another man.

* * *

CLOTH:

1. If we had a double pump on our press, which would cost about $375, it might save a half man. We could not take off one completely as they do other odd jobs such as changing rolls, cleaning up, taking our waste, etc.

2. When we get our seconds down to 3 per cent I can take off one picker and one inspector—which would save around $100 per week.

* * *

9 (C) Job Assignment Changes Accomplished.

1. A new drawing piece rate was installed. This took into account a decrease in can weight on four frames. The purpose was to creel roving frames at the doff with minimum waste and eliminate turn cans.

2. One weaver per shift was added due to increase in loom stops on style 390.

* * *

E. Projects completed:

* * *

3. A job calculation was completed on the yarn hauler.

* * *

13. Personnel:

Comments: We are glad to report that Mr. Grainger from Johnston plant, who was their chief machinist, is going to work for us next Monday morning. Mr. Grainger has made two trips to our plant and Mr. Bill Goodwin seems very well satisfied with his ability to handle our job here. I feel that we are very much indebted to Mr. Peden for his cooperation in releasing Mr. Grainger. I may have written you that this was handled through Charlie Johnson's office. We had requested him to look through his files for any second man in any of the shops whom management had recommended for promotion as master mechanic. I wrote you about losing the Gaffney second hand to New Holland. Mr. Grainger was the only other man in the file that had been recommended by his management for a promotion. I am sure it is gratifying to know that we have again made a promotion within the organizations, and I feel that it has been handled in the right way.

Number of trainees hired:

Comments: We are sorry to report that we are losing Carl Zimmerman, our Clemson man to the army at the end of this month. We had anticipated keeping him until the fall of the year but he was called for active duty by April 1st. This is the third college trainee that we have in service. We may have written you that we are getting a Georgia

Tech man on March 26th who is a cooperative student. We are planning to use him on our tension analyzer for three months. In his other work he was with the New Holland plant. I called Mr. Baker and he agreed that they did not need im for the second go-round and we are glad to get him as we understand he is a very good man. We did go out of our way a little bit to pay him a little more than we have been paying our trainees but feel it is justified under the circumstances.

Key personnel who have quit:—

Comments: We have reported to you previously that Oscar Fleming, our master mechanic, is no longer with us.

* * *

General Counsel Exhibit O-9

REPORT OF OPERATIONS
Period Ended 8/5/56

* * *

6. Planned operating schedule: 144 hours per week. No comments.

* * *

In checking Deering Milliken Research Corporation's report on card repair vs. new parts cost we found that we are now doing most of the recommended work. As our program expands we will include all possible phases of shop repair work.

* * *

SPINNING: * * *

3. Have lined up the doffer assignments which has allowed us to take out one more doffer per shift. We still, however, are working on running time of our warp to get it on an eleven hour cycle.

* * *

WEAVING: * * *

2. We are having the eyes of all weavers and smash hands examined by a local doctor.

* * *

4. We have eliminated one smash hand on each shift in X-model room.

* * *

Comments: Mr. Goodwin is having weekly meetings with all second hands and the overseer of weaving in a drive to improve our loom stops. He is personally

inspecting a group of looms several times a week making a list of anything he finds wrong with that loom. This inspection program is divided up among the second hands of each room and they thoroughly inspect a certain group of looms. The drive is mainly on better loom-fixing and less crossed up warps. We already see some improvement in our loom studies as far as warp stops are concerned. We believe with this continued program we are going to see real progress made in our weaving department. This may be what the union organizer is referring to in a letter this week. In any event we are going right ahead with our plans as we believe this to be sound and constructive.

* * *

9. A. Expense Reductions Accomplished:

1. New rates were installed on warp doffing.
2. The allowance for threading travelers was removed from 20's filling.
3. One yard man was eliminated.
4. Filling doffers and battery hands were reassigned based on increased package size.

* * *

B. Expense Reductions Planned:

1. The quill stripper job study should be completed this period.

* * *

C. Job Assignment Changes Accomplished:

1. The warp and filling doffers were reassigned due to job changes

2. Saco-Lowell spinners were reassigned due to style changes
3. E-model weavers were reassigned due to style changes.

D. Job Assignment Changes Planned:

Present permanent jobs	457.50
Permanent jobs last period	461.25
Net gain	3.75
1956 Goal	406.50
Savings this period	$ 11,399
Accumulated this year	156,223
1956 Goal	348,225.
Balance to accomplish goal	$192,002

* * *

13. Personnel:

A. Promotions. No comments
B. Number of trainees hired: No comments
C. Key personnel who have quit. No comments

General Counsel Exhibit O-10

REPORT OF OPERATIONS

Period Ending September 2, 1956

1. Sales for Period—Net	$ 425,461
Planned sales for period	478,000
Over or (under) planned	(52,539)
Sales this year to date	$4,508,063
Sales last year, same periods	4,952,472
Over and (under) last year	($ 444,409)

	Period	Year to Date
2. Profits for period, subject to taxes	$ (151)	$ 146,158
Planned profits for period	–	176,000
Over or (under) planned	(151)	(29,842)
Profits last year, same periods		$ 229,890

Comments: We are listing below the extraordinary expenses in this period, and you will note that they amounted to $25,832. The large item for $17,500 covered part of our Dixon saddles. This week we have received shipment of part of our Duo-Roth and the saddles and front rolls from Dixon continue to come in weekly. By the end of next period it is possible we will have a sizable payment to make on both items. We are contemplating some extra labor for putting on our Pneunafil, Duo-Roth and new saddles. We will continue to absorb this extra expense for labor in the spinning room.

We are continuing to find that our actual sales are underestimated. One thing that affected sales in this period was

the charge-back by Arcadia of some filling sateens delivered several periods ago. This customer claims that they are having trouble with rolling of selvages, but on investigation by Mr. Shotwell, it was brought out that some of the goods shipped on the order had been finished at three different bleacheries with trouble in some bleacheries much worse than others. The cloth went to a screen printer and the selvages rolled when spread out for screen printing. We are refusing to relieve the customer of the delivery of these goods but Deering Milliken has charged it back to us until the matter is settled.

Freight on looms	$ 3,675.72
Freight on spooler	636.59
Loom beam barrells	838.76
8¾" 3-Ring bobbins	1,675,71
Loom switches	1,505,28
Dixon saddles, parts	17,500.00
	$ 25,832.06

Report of Operations

3. Estimate for sales and profits next three periods:

		Sales	Profits
Period ending:	9–30–56	$463,000	—
	10–28–56	459,000	—
	12– 2–56	446,000	—

Comments: We have advised you that the extraordinary expenses now and until end of year will not only absorb profit that we might have made but also profit year to date. The larger items of these expenses are Duo-Roth and Dixon saddles amounting to $149,000. and the clearing of the supply room area for the 50" looms which will run around $35,000.

4. Number of weeks production on order: 7,469,000 yards equal to 14.2 weeks production.

Comments: We wrote you that our goods on order amounts to about 14 weeks production. This is in line with our last period's report and indicates that we have not lost ground on the whole by our sales but our sales for the period have covered our production.

5. Inventory of cloth, 2,586,521 yards, $536,356. Includes both goods applied and on order and goods for sale. We have 1,482,000 yards of stock on hand for sale, which is equivalent to 2.8 weeks production.

Comments: Our stock on hand for sale went up about 225,000 yards. As reported previously, the biggest item in our inventory at present is our 109x58 broadcloth. This amounted to about 950,000 yards. During the period we did sell some of our inventory of short lengths and poplins and 109's. These goods were sold at a very low price but we felt it was wise to move some of the inventory so that it would not continue to accumulate. As it is, we have in inventory about 360,000 yards of seconds and short lengths.

6. Planned operating schedule: 144 hours per week. No comments.

7. Long or short position of raw materials inventory both on hand and on order: 494 Bales short.

Comments: You will note that we are about 500 bales short. We still have about 5700 bales of futures sold on which we have a loss of about $8.00 per bale. Mr. Truluck was here this week and it is our opinion that as the crop is gathered the hedging operation will depress the market. It certainly seems that we cannot hit any hedging operation that shows a profit.

General Counsel Exhibit O-10

Report of Operations.

* * *

Reports of Overseers edited by Mr. Goodwin

8. A. Projects Accomplished to Improve Quality:

CARDING:

1. Our cotton mix is now 42 per cent Memphis and 58 percent California. We will go to a 50 - 50 per cent mix this coming week.

2. Our Superior Junior cleaner installation was completed this weekend. It is too soon to say just what the extent of the help these cleaners will give us but we are getting a much better mote removal.

3. Whitin's representative set up one 12x6½ roving. There was some improvement but further tests will determine if we get better running roving and spinning.

4. We now have all the coarse filling counts on .80 bank roving. This gives the Carding Department some help in reducing cost per pound.

5. We added a Whitin cage section to our opening line to remove more dust.

SPINNING:

1. Changed 36 frames of filling and 12 frames of warp from 1.10 roving to .80.

2. Lowered roving rods on 40 frames of umbrella creel.

General Counsel Exhibit O-10

3. Polished and turned 9 frames of rings on filling.
4. Put one frame of 2" rings on 1948 model. This completes all 1948 model with these rings.
5. Have plumbed 4 frames New Era spindles.

WEAVING:

1. We have changed 60 X looms to 8¾" bobbins, and to enable us to do this we are having to change the shuttles. We plan to change all of our looms to the 8¾" bobbins.
2. We have set up a program which will make each weaver responsible for keeping the warp and selvages straight on one-third of his set of looms.
3. We are having each blow-off man on E looms clean the ends of three or four looms each day. Our E room is beginning to look much cleaner.
4. We have almost completed on 365 looms the 26" beam change-over. The other 48 looms have not been moved.
5. We have two men on a loom-fixer training program who we intend to put on the new looms when we get them started.

CLOTH:

1. We have changed our grading system and have tightened down on our majors and points. Our broadcloths carry 12 majors and 72 points per hundred yards and prints carry 15 majors, 90 points per hundred

yards. We feel that this has already helped us. We let our inspectors determine whether the cloth is seconds or not. The graders are only cutting it. This will save a lot of money in labor, shorts and remnants. We started out on a low production but the inspectors are back up to 10,500 yards now. I feel that later on we will be able to cut out a grader.

8. B. Projects Under Way and Planned to Improve Quality:

CARDING:

1. We are still waiting for Pneumastop.
2. The ceiling cleaner on our lap conveyor does not keep card room ceiling clean. American Mono-Rail is supposed to come and investigate this problem.
3. We are still working on the hardened builder inserts. These inserts really help the build on a roving bobbin.
4. We have parts on order to change all 12x6½ roving to same gearing Mr. Willingham (Whitin Representative) put on the one frame he changed.
5. We have two sets of ball bearing licker-in bearings on order to try on a card test.
6. We are going to put one more set of roller bearings on a solid steel stack roll.

CLOTH:

1. We are planning on putting "MARK FIX" tools on all the inspectors' frames. This will save a lot of time in the tagging of cloth.

2. We are planning to change one stitcher immediately for the 50" goods which will be on very soon. We already have the equipment.

* * *

8. C. Allowances made during period:

Comments: I referred to the problem we are having with Arcadia on filling sateens and tight salvages. We are further experiencing some problems with Marvin Fabrics on delivery to them of some 80x76 broadcloths. When I was in New York I went to Standard Bleachery to look at some of these goods. They are putting a resin treatment on this cloth and polishing it to be used for draperies in kitchens. Two colors seem to show up the neps much worse than others. They have about 4000 yards on which they are making complaint. We have about 275,000 yards more to deliver on the contract and Mr. Shotwell is working with them as to whether they will cancel out the balance of the contract or not put it in these two colors. I am not sure where we stand on such a complaint. Mr. May understands that we are discussing the cancellation of the contract if the customer agrees.

D. Percentage of first quality on periods production:

Mill totals	92.60%
Last period	93.31%
Decrease	.71%

General Counsel Exhibit O-10

Comments: I wrote you in one of our weekly letters that Bill Goodwin made a trip to Gaffney to go over their cloth room inspection and he found that we could benefit from using their method. We were getting so little for the short lengths that we had to make a change. We are now grading the cloth and if there are sufficient places that we would cut out to be graded into seconds we are putting it into seconds rather than cutting the cloth and putting into short lengths. This has increased our seconds but we are glad to report that for the present week our seconds were down to 4.06 per cent and average 7.8 majors per 100 yards. This is the best we have had for some time and shows the work that is being done by the weave room when we have reported more pieces of seconds. On the whole we feel satisfied that this change will be very helpful to us.

E. Loom efficiencies:

Week ended:	8–11	8–18	8–25	9–1	Totals
Loom E	91.1	91.3	92.0	92.2	91.7
X	89.1	89.2	89.3	89.2	89.2

Mill average 90.67%

Comments: We are delighted to note that our loom efficiencies increased about 1½ per cent during the period over last period. We had improvement in both E and X model rooms. The biggest improvement you will note above came in our E model looms. The work Mr. Goodwin is doing with supervision is paying off both in improvement in seconds and efficiencies.

* * *

General Counsel Exhibit O-10

Report of Operations

* * *

(Mr. Hawkins)

9. A. Expense Reductions Accomplished:

1. Three smash hands were eliminated at a saving of $8,990 per year.

2. As a result of changes and recommendations made by the Whitin field representative on our 12x6½" roving frames the weight variation within the roving bobbins has been decreased. It was mentioned in our last report that after testing each of our 12x6½ frames a strong pattern of lightness at start-up and doff were found. Preliminary tests indicate that a considerable amount of this lightness has been removed as a result of the information received from the Whitin representative.

3. We have established per cent non-uniformity control limits for each process that are based on current testing information and variability. These control limits are designed to indicate whether or not the average N.U. is high as a result of the following:

(a) Individual delivery or creel stock

(b) Frame average

(c) Room average

In addition control limits have been established to indicate excessive delivery to delivery and frame to frame variability.

B. Expense Reductions Planned:

1. Studies are in process toward combining the quill-hauling and quill stripper job. This should eliminate two people.

2. Testing has been started to determine the optimum quality break draft to use on our 0.80 and 1.10 hank roving. This preliminary testing is designed to indicate the best two or three break drafts to use from a group of six to eight possible combinations. The best two or three break drafts will be tested in detail to determine the optimum draft gear combination for our situation.

3. As a result of investigation by our laboratory we are planning to change the two twist constants on our filling spinning to be the same. Indications are that this can be accomplished through the changing of one head and gear on our Saco-Lowell frames and the modification of the twist change gears. We currently have one experimental frame on this and it has proven satisfactory. We contemplate a saving in new gears and a 40-50 per cent decrease in our current twist gear stock. We are holding up on this pending approval of the twist gear modifications by The Research Trust.

C. Job Assignment Changes Accomplished:

1. Smash hand jobs were extended due to the large loom beam installations.

Report of Operations.

D. Job Assignment Changes Planned:

Present permanent jobs	458.25
Permanent jobs last period	461.25

General Counsel Exhibit O-10

Net gain	3.00
1956 Goal	406.50
Savings this period	$8.990.00
Accumulated this year	165.213.00
1956 Goal	348.225.00
Balance to accomplish goal	183.012.00

E. Projects Completed:

1. Speeds were checked from opening through spinning.
2. Spinner rates were computed for new styles.
3. A test was run on spooling with different snick-plate settings.
4. A test was run on spinning with various roving rod settings.
5. Savings estimates were computed for several different size drawing cans.

F. Frequency Check Averages:

	Last Period	Accumulated This Year
1. Breaker drawing—Brks/hank	.630	.609
Finisher drawing " "	.390	.345
1.80 M.R. Brks/100 Spdl. hrs.	2.57	2.26
1.10 H.R. " " " "	7.71	5.02
31's Warp—Ends down/M.S.H.	51.5	51.6
33's Filling " " "	55.5	54.9
42's Filling " " "	51.6	51.9
Spooling	19.0	21.3
Warping	9.94	8.40

2. Loom Stop Averages:

Style	Warp	Filling	Misc.	Total	Accumulated This Year
333 E Broadcloth	1.14	.44	.29	1.87	1.95
417 E Printcloth	.38		.07	.45	.46
333 X Broadcloth	.96	.49	.42	1.87	2.00

Report of Operations

3. Laboratory Quality Summary:

Card Room:

	Percent Non-Uniformity		Average percent C. V.	
	This Year	This Period	This Year	This Period
Picker lap	—	—	1.21	1.13
Card sliver	12.9	17.2	5.22	5.54
Breaker drawing	12.9	16.1	1.66	1.88
Finisher drawing	15.5	17.5	1.40	1.45
0.80 H.R.	31.7	31.7	2.09	2.09
1.10 H.R.	34.7	34.7	1.69	1.40
1.80 H.R.	40.1	40.4	1.40	1.30

Spinning:

	31.5's Warp		33's Filling	
	This Year	This Period	This Year	This Period
Percent Non-uniformity	101.3	102.4	97.5	101.8
Per cent C. V. (over all)	2.82	2.72	2.69	2.40
Imperfections per 50 yards	75.4	60.5	62.8	59.5
Corrected skein break factor	2311	2363	2220	2260
Corrected single end break factor	8944	9481	8425	8836
Percent elongation at break	6.97	6.82	6.91	6.75

Slashed Yarn:

	Slasher #1		Slasher #2	
Single end break (grams)	348.8	356.5	343.3	334.3
Per cent elongation at break	4.87	5.05	4.87	4.91

Cloth bale weights vs. standard 0.247% Heavy 0.069% Light

* * *

General Counsel Exhibit O-10

Report of Operations.

10. Research projects: No comments.

11. New York office:

Comments: On my visit to New York during the period we called on a number of customers to try to get the trend as to their using our broadcloths and poplins. Some customers stated definitely that they felt the 109x58 broadcloths could not be replaced by the 100x58 3.65 and that we could expect some business in the Fall and especially in the Spring. Such comments are not very helpful when we are experiencing a very slow market.

12. Plans for new styling or fabric developments: No comments.

13. Personnel:

A. Promotions: No comments

B. Number of trainees hired: No comments

C. Key personnel who have quit. No comments.

Comments: We have employed a plant nurse who plans to go to work next week. She is a Registered nurse and has had experience in one of the doctor's offices. She had to give up this work because of the fact that she had a child in second grade, and she was often required by the doctor to come back some times at night to help with delivery cases. I called each of the three doctors in town to tell them of our plans and get their comments on Mrs. Huntley. In each case the comments were favorable, and we feel that this is a step in the right direction. We have been trying to find a person to fill this job for at least a

year. I feel that her contacts with people will be helpful to us as well as beneficial in following first aid cases in the plant. We certainly hope it will make an improvement in our safety record.

14. Machinery:

A. Bottlenecks. No comments

B. New machinery being investigated. No comments.

C. New machinery on order: No comments.

15. Trips. No comments.

J. M. O.

General Counsel Exhibit O-11

REPORT OF OPERATIONS

Period Ending September 30, 1956

* * *

6. Planned operating schedule: 144 hours per week.

Comments: We wrote you recently that we are running our weaving 144 hours a week and the other departments as much as necessary to keep the weaving in filling and warp yarn. We have used up our supply of extra warp yarn on hand and our operation except in the card room will be at least five days throughout the plant.

* * *

MACHINERY MAINTENANCE:

Our maintenance man continues his regular cycle. At this time he is working on cards. He is checking all cards for loose nuts, bolts and screws and checking the setting on all gears. This cycle is strictly preventative maintenance as he is replacing no worn parts.

The maintenance man continues to improve and is very much interested in his job. He is fully aware of the importance of preventative maintenance.

* * *

WEAVING: * * *

1. One second hand left this period and was not replaced.

2. Six weavers were taken out of X model room, three due to better running and going to 30 looms on broadcloth and three due to putting looms on 80 sq. hair cord.

* * *

9. * * *

C. Job Assignment Changes Accomplished:

1. None

D. Job Assignment Changes Planned:

1. We plan to eliminate six weavers' jobs next period.

* * *

13. Personnel:

A. Promotions: No comments

B. Number of trainees hired:

Comments: We have three college men who are presently in the armed services. In discussing this matter with Charlie Johnson it was decided if the stockholders voted to liquidate I would write these three men and suggest that they get in touch with Charlie's department on their return to be placed elsewhere in the D. M. Organization. They are all three good men, and I feel that any plant would be fortunate to get them, especially one who has had training all over the mill during vacations and who finished at Clemson College in textiles.

C. Key personnel who have quit:

Comments: I was in Columbia Wednesday night when the faculty of the University was entertained by Charlie Johnson. I discussed with him the status of some

General Counsel Exhibit O-11

of our supervisors. I mentioned especially the fact that our card room and spinning room overseers have about made up their minds to accept the jobs at Morgan Mill in Laurel Hill. Charlie says that he had circulated the appraisal of all of our supervisors to other mills. Hugh Campbell who is our preparation overseer, heard in Greenville yesterday at the show that Pacolet #5 was looking for a preparation man. Bill Goodwin had him call Pacolet this morning and talk with Clarence Holland but Clarence said they did not need a man and that the rumor was without foundation.

General Counsel Exhibit O-12

March 7, 1956

Mr. J. W. Greene
Monarch Mills
Union, South Carolina

Dear J. W.:

I wanted to tell you how much I appreciated your help in looking into Mr. Carl Hicks. I had a call yesterday from Dr. Hope, and after everything considered we about decided to employ the chief machinist at the Johnston plant. This is promoting from within and I feel would be better than to go outside. I wanted to write you to let you know how the matter came out and express to you my appreciation you my appreciation for your interest and help.

I am sure you know that we are all wishing the very best for you in your new position.

Very truly yours,

J. M. OELAND

General Counsel Exhibit O-14

July 20, 1956

Mr. Lewis Ellis
Monarch Mills
Union, South Carolina

Dear Lewis:

It came out at the recent Treasurers' meeting the system you have installed for feeding your reweavable waste back into the opening line. This sounds like a very good idea and I would like to have our Card Room overseer visit Monarch to look over the installation. I would like to have him visit the mill on July 31st. If this is not convenient, please advise.

Sincerely yours,

W. A. GOODWIN,
Production Supt.

General Counsel Exhibit O-15

MONARCH MILLS, UNION, S. C.

Date: March 9, 1956

To: Darlington —Mr. W. A. Goodwin
Mr. W. S. Hawkins
Drayton —Mr. T. C. Jolly
Mr. R. C. Owings
Gaffney —Mr. George Rankin
Mr. Jack Fagan
Hartsville —Mr. D. R. Arrowood
Mr. J. A. Garner
Laurens —Mr. M. G. Wallach
Mr. Jack Armstrong
Mr. A. T. Wilbanks
Lockhart —Mr. J. A. Ferguson
Mr. U. C. Crenshaw
Ottarey —Mr. H. L. Praxt
Mr. C. V. Hudgens
Pacolet #4 —Mr. J. M. Jackson
Mr. B. V. White
Mr. Milon Christman
Pacolet #6 —Mr. Winston Garth
Mr. Frank Hadden
Mr. J. D. Allen
Pacolet #3 and #5 —Mr. C. T. Holland
Mr. T. E. Peterson
Judson —Mr. Alfred New
Mr. Pal Gray
Cotton Dept. —Mr. Barry Defore
Mr. Ray Toher
DMRC —Mr. R. W. McCollough
DMIED —Mr. Harold C. Moss

CC: Mr. Roger Milliken
Mr. M. C. Stone
Mr. Sterling Smith
Mr. K. M. Lowry
Mr. R. B. Newton
Mr. A. B. Sibley
Mr. J. M. Oeland
Mr. H. C. Byrd
Mr. J. J. Norton
Mr. I. S. Pitts
Mr. W. A. L. Sibley
Mr. G. G. Simmons
Mr. J. M. Bailey
Mr. L. C. Ellis
Mr. W. D. McBee
Mr. Ernest Lancaster
Mr. R. H. Yentis
Mr. Hans Klauei

From: J. K. Shannon

Subject: SPINNING CONFERENCE

Attached is the schedule for the Spinning Conference which will be conducted at the Monarch Plant, Union, South Carolina, April 17, 1956, at 10:00 A.M.

Each mill is requested to have the spinning room overseer present and you will note that each mill is allotted fifteen

minutes to present it's progress and experience during the past year.

Lunch will be served in the Conference Room from 12:30 to 1:00. Dinner will be served at the Fair Forest Hotel at 6:30 P.M.

J. K. Shannon

* * *

H. MAINTENANCE

1. Discuss how maintenance inspectors and maintenance men are used in your spinning room. How often are machines inspected by mill inspectors? Where are present demerit levels?

2. Describe regular maintenance performed on spinning room machinery, other than that performed by maintenance men.

General Counsel Exhibit O-20A

FEDERAL TRADE COMMISSION
Washington 25, D. C.

THIS REPORT IS REQUIRED BY LAW. It is mandatory under authority of the Federal Trade Commission Act.

WITHIN 30 DAYS after the end of the period for which this report is requested, complete and return one copy to Federal Trade Commission, Division of Financial Statistics, Washington 25, D. C.

THIS REPORT IS FOR YOUR 3-MONTH PERIOD which ended within the fourth calendar quarter of 1956.

4. This corporation (*check one*):

☐ is not a subsidiary of another corporation.

☐ is a subsidiary of Deering Milliken & Co.

.....

.....

(Name and address of parent corporation)

General Counsel Exhibit O-20B

FEDERAL TRADE COMMISSION
Washington 25.

4. This corporation (check one):

☐ is not a subsidiary of another corporation.

☐ is a subsidiary of

.....

.....
(Name and address of parent corporation)

5. This corporation (check one):

☐ has no subsidiary corporations.

☐ has ..... (Number) domestic and ..... (Number) foreign subsidiary corporations.

Respondents' Exhibit O-1

July 1, 1955

Mr. Roger Milliken
234 S. Fairview Avenue
Spartanburg, S. C.

Newsletter

Dear Mr. Milliken:

We are today receiving the 5-roll lap back drawing purchased by Jim Higginbotham for us from Woodside Mills. I had written you previously that we are planning to get additional 24 deliveries in order to have drawing with the same gauge as our lap back drawing that has been changed to can back. This was purchased at $160.00 a delivery. We are selling to Pacolet some of the 4-roll we purchased last year from Gossett at $65.00 a delivery. I think I wrote you previously that we paid $100.00 a delivery, but this was in error, as we paid $85.00 a delivery. This change was brought about as we went to the 70 gr. sliver, which means that we will have fewer frames in operation using the 5-roll drawing for both breaker and finisher drawing. We are planning to speed this up to get through our poundage production hoping to eliminate one drawing frame tender on each shift. We presently have equipment to experiment on one of these frames with a 15x36" can. This equipment is being purchased from Carolina Foundries. It is very simple and does not require changing the can turn. It is my understanding that we will put it in the 15" can with the same turntable but with a different type coil. This is the cheapest change-over for us, but it has certain limitations which we are looking into.

We are also receiving today the equipment for the blowing off of our looms downstairs. The track and warp beam

conveyer have been in for several weeks. We have been delayed in receiving the blowing off equipment and hope to have this completely installed and running next week.

It has been necessary for us to stop the weave room off two 8-hour shifts the last two weeks. In filling up our 28" loom beams presently being installed in the lower weave room more of our warp yarn went to in-process causing us to have to make this reduction in the hours run by the weave room. It would seem at the moment that we are over the hump—and hope that we can continue to produce enough yarn in the spinning to take care of our weaving necessities. We are changing an average of six looms a day to the 28" beams. We have about completed all the X-model looms that had 22 inch beams on them; we are about half through the entire lower weave room.

It is our plan to shut down the 24 hours of July Fourth in order to save the premium pay for this holiday.

You will note from my exchange of correspondence with Barnes Textiles that we have approved their going ahead with the study in the weave room. Mr. Woodward was here Monday and brought a junior with him who has been on the job this week. It has been decided that we will periodically have discussions with them as to their findings and suggestions especially on items that we can improve on in the immediate future.

We are still working with Mr. Bush's department in having water tested both from our well and drinking water supply and the pond which furnishes sprinkler and boiler supply. We had a letter from Mr. Bush this week stating that he felt the test on the drinking water supply was

all right. Murray Laboratories had stated that the iron in this water being used through our humidifier system might discolor the cloth. We agree with Mr. Bush that this is rather far-fetched, and feel that with the test available our drinking water supply is all right. It was further Mr. Bush's opinion that the treatment of the boiler water which we are presently doing is in order. We sent back this week some water from our storage pond. The other tests we had previously made were from out of the stream that was pumped into our storage pond, and there were certain characteristics of this water that Mr. Bush felt were not satisfactory. We had previously tested the water from the pond and it had looked as if it was all right. We, of course, are at a loss to see what difference there would be from testing the water in the pond and that in the stream. We are still analyzing the entire situation before putting in our new sprinkler system in the two weave rooms. The contract for this has been let to Grinnell Company after bids were sent out by Mr. Bush, as they were the low bidder.

We turned down an offer for a million yards 109x58 3.33 broadcloth for fourth quarter for 22¾ cents from Stein-Tex. We are presently asking 23 cents and with the uncertainty of what we will have to pay for cotton, and the fact that both 80 sq. ad 100x60 broadcloth have gone up we are holding out for the ¼ cent more. Al May said over the phone yesterday we had lost the order to our competitor.

We are receiving very few inquiries at the moment for broadcloths. I was up at North Carolina Finishing recently and it was Mr. Riddle's opinion that the lull was temporary, and usually the third quarter was slow on this

type business. They are anticipating continuing to finish a large amount for customers with the Tebilized finish they are presently doing.

Mr. Stallworth is away on his vacation. I am planning to get off the first two weeks in August if things work out satisfactorily.

Very truly yours,

J. M. Oeland
Treasurer

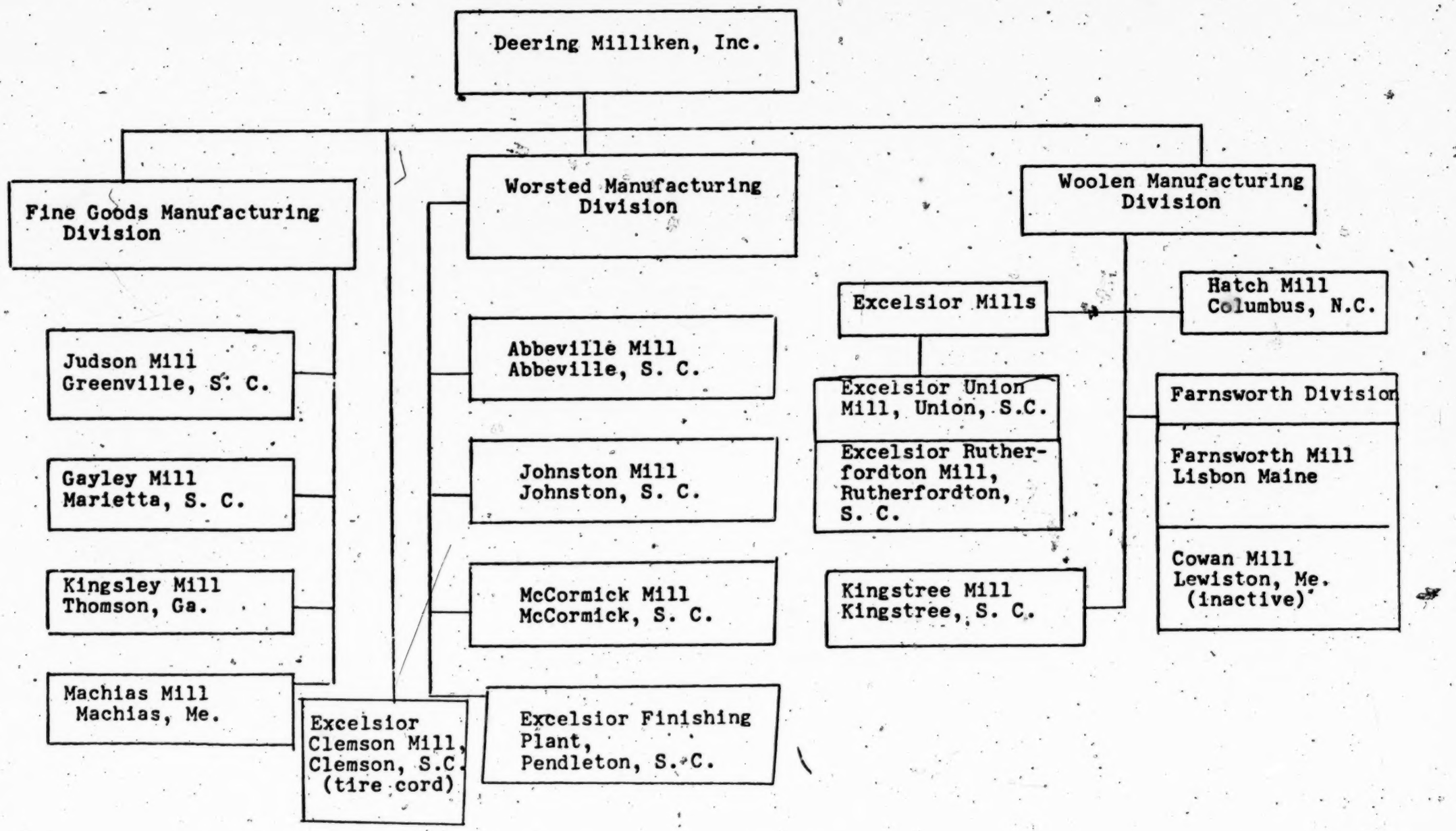
jmo-m

General Counsel Exhibit R-19

PART III

Exhibits at 1962 Hearing

CHART OF TEXTILE MILLS OWNED BY DEERING MILLIKEN, INC. as of December 1, 1960.



General Counsel Exhibit R-21

May 16, 1960

Mr. Paul J. Wilson, Jr. Mgr.
Insurance Department
Deering Milliken Service Corp.
P. O. Box 1903
Spartanburg, South Carolina

RE: WORKMEN'S COMPENSATION
DEERING MILLIKEN, INC.

Dear Mr. Wilson:

In accordance with your letter of May 10, 1960 we are amending the named insured on all of your policies to Deering Milliken, Inc. as of June 12, 1960.

Very truly yours,

JOSEPH F. CONROY
Joseph F. Conroy
Ass't to Vice President

JFC:PJB

CC: Mr. J. R. Blades
Mr. E. F. Flanigan, Comptroller

General Counsel Exhibit R-24

OPERATING DIVISIONS AND SUBSIDIARIES OF DEERING MILLIKEN & CO. INC. AND THE COTWOOL MANUFACTURING CORPORATION

Prepared Pursuant to Order of United States District Court, Middle District of North Carolina.

THE COTWOOL MANUFACTURING CORPORATION (as of 12/1/59)

OPERATING SUBSIDIARIES:

(A) Abbeville Mills Corporation
(B) Excelsior Manufacturing & Merchandising Company
(C) Excelsior Mills, Inc.
Divisions:
(D) Clemson Division
(E) Union Division
(F) Rutherfordton Division
(G) Worsted Division
(H) McCormick Mill
(I) Johnston Mill
(J) Pendleton Finishing Plant
(K) Gayley Mill Corporation
(L) Hatch Mill Corporation
(M) Kingsley Mill Corporation
(N) Kingstree Manufacturing Co. Inc.
(O) Machias Mill, Inc.
(P) Clemson Fabrics, Inc.

OPERATING DIVISIONS

(Q) Farnsworth Division
(R) Cowan Division
(S) Judson Division

DEERING, MILLIKEN & CO. INC. (as of 12/1/59)

OPERATING SUBSIDIARIES:

(T) Deering Milliken Export Corporation
(U) Milliken Woolens, Inc.
(V) Milliken Yarn Sales, Inc.

DIVISIONS

(W) Milium Division

General Counsel Exhibit R-24

DEERING MILLIKEN INC. (as of 12/1/60)

(following Deering Milliken-Cotwool Merger effective June 12, 1960)

SUBSIDIARIES:

(U) Milliken Woolens, Inc.
(B) Excelsior Manufacturing & Merchandising Company
(N) Kingstree Manufacturing Co., Inc.
(O) Machias Mill, Inc.
(P) Clemson Fabrics, Inc.

DIVISIONS:

(S) Judson Mills
(M) Kingsley Mill
(E) Excelsior Woolen Mill
(F) Excelsior Rutherfordton Mill
(Q) Farnsworth Mill
(L) Hatch Mill
(A) Abbeville Mill
(G) Excelsior Worsted Mills
(H) McCormick Mill
(I) Johnston Mill
(J) Pendleton Finishing Plant
(D) Excelsior Clemson Mill
(K) Gayley Mill
(V) Milliken Yarn Sales
(W) Milium Division

General Counsel Exhibit R-25

DEERING MILLIKEN, INC.:
(As of December 1, 1960)

Officers:

President	Roger Milliken
Vice President, Treasurer & Ass't Secretary	Minot K. Milliken
Vice President & Ass't Treasurer	H. A. Hatch
Vice President & Ass't Treasurer	J. R. Smith
Secretary & Ass't Treasurer	C. W. Kable, Jr.
Controller & Ass't Secretary	E. F. Flanigan
Vice President	R. C. Baldridge
Vice President	G. H. Boynton
Vice President	C. M. Burchard
Vice President	C. R. Clausen
Vice President	H. J. Dekker
Vice President	A. J. Dillard, Jr.
Vice President	J. C. Harris
Vice President	F. G. Kingsley
Vice President	A. J. May
Vice President	G. H. Milliken, Jr.
Vice President	S. M. Milliken
Vice President	A. B. Sibley
Vice President	N. B. Woodworth
Ass't Treasurer	F. H. Meserve

Directors:

John H. Bierwirth
H. A. Hatch
F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

Operating Divisions:	Division Executives
Judson Mills	A. B. Sibley—President
Kingsley Mill	A. B. Sibley—President
Excelsior Woolen Mill	J. A. Meehan—President
Excelsior Rutherfordton Mill	J. A. Meehan—President
Farnsworth Mill	J. A. Meehan—President
Hatch Mill	J. A. Meehan—President
Abbeville Mill	George Asnip—President

General Counsel Exhibit R-25

Excelsior Worsted Mills	George Asnip—President
Excelsior Clemson Mill	E. D. DeFore—Vice President & General Manager
Gayley Mill	E. O. DeFore—Vice President in Charge of Operations
Milliken Yarn Sales	A. J. Dillard—Vice President
Milium Division	H. V. Kennedy—Manager

Operating Subsidiaries:

Milliken Woolens, Inc.:

Officers:

President	Roger Milliken
Vice President & Treasurer	Minot K. Milliken
Vice President	C. M. Burchard
Vice President	A. J. Dillard, Jr.
Vice President	L. J. Fisher, Jr.
Vice President	F. G. Kingsley
Vice President	E. D. Shaw
Vice President	N. B. Woodworth
Secretary & Ass't Treasurer	C. W. Kable, Jr.
Ass't Secretary	E. F. Flanigan

Directors:

H. A. Hatch
F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

CLEMSON FABRICS, INC.:

Officers:

President	Roger Milliken
Vice President & Treasurer	E. O. DeFore
Secretary	T. N. Hunnicutt

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

EXCELSIOR MANUFACTURING & MERCHANDISING COMPANY:

Officers:

President & Treasurer	Roger Milliken
Secretary & Ass't Treasurer	E. G. Allee

General Counsel Exhibit R-25

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

KINGSTREE MANUFACTURING CO., INC.:

Officers:

President	Roger Milliken
Vice President & Treasurer	J. A. Meehan
Secretary	M. C. Stone, Jr.

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

MACHIAS MILL, INC.:

Officers:

President	Roger Milliken
Vice President & Treasurer	A. B. Sibley
Secretary & Controller	R. L. Collett

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken
A. B. Sibley

JOHNSTON MILL CORPORATION:

Officers:

President	Roger Milliken
Vice President	F. G. Kingsley
Vice President & Treasurer	Minot K. Milliken
Secretary	C. W. Kable, Jr.

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

General Counsel Exhibit R-26

DEERING, MILLIKEN & CO., INC.
(As of December 1, 1959)

Officers:

President	Roger Milliken
Vice President & Treasurer	Minot K. Milliken
Vice President & Ass't Treasurer	H. A. Hatch
Vice President & Ass't Treasurer	J. R. Smith
Vice President & Ass't Secretary	G. H. Milliken, Jr.
Vice President	G. H. Boynton
Vice President	I. P. Crowther
Vice President	A. J. Dillard, Jr.
Vice President	J. C. Harris
Vice President	F. G. Kingsley
Vice President	A. J. May
Vice President	S. M. Milliken
Secretary & Ass't Treasurer	C. W. Kable, Jr.
Controller & Ass't Secretary	E. F. Flanigan

Directors:

H. A. Hatch
F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

Operating Subsidiaries:

Deering, Milliken Export Corporation:

Officers:

President	J. C. Harris
Vice President	F. G. Kingsley
Vice President	Minot K. Milliken
Treasurer	Roger Milliken
Secretary	F. H. Meserve
Ass't Secretary	C. W. Kable, Jr.
Controller	E. F. Flanigan

Directors:

J. C. Harris
H. A. Hatch
F. G. Kingsley
Minot K. Milliken
Roger Milliken

General Counsel Exhibit R-26

Milliken Woolens, Inc.:

Officers:

President	Roger Milliken
Vice President and Treasurer	Minot K. Milliken
Vice President	A. J. Dillard, Jr.
Vice President	L. J. Fisher, Jr.
Vice President	F. G. Kingsley
Secretary & Ass't Treasurer	C. W. Kable, Jr.
Ass't Secretary & Controller	E. F. Flanigan

Directors

H. A. Hatch
F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

Milliken Yarn Sales, Inc.

Officers:

President	Roger Milliken
Vice President in Charge of Sales	A. J. Dillard, Jr.
Vice President & Treasurer	Minot K. Milliken
Secretary	C. W. Kable, Jr.
Controller	E. F. Flanigan

DEERING, MILLIKEN & CO. INC. (con't)

Milliken Yarn Sales, Inc.

Directors:

H. A. Hatch
F. G. Kingsley
Minot K. Milliken
Roger Milliken

Operating Division:

Milium Division	George M. Jolly, Manager.

General Counsel Exhibit R-27

THE COTWOOL MANUFACTURING CORPORATION:
(As of December 1, 1959)

Officers:

President	Roger Milliken
Vice President & Secretary	Minot K. Milliken
Vice President	G. H. Milliken, Jr.
Vice President—Judson Mill Division	Alan B. Sibley
Vice President—Judson Mill Division	J. M. Bailey
Vice President—Farnsworth Mill Division	J. A. Meehan
Treasurer	F. G. Kingsley
Ass't Treasurer & Ass't Secretary	C. W. Kable, Jr.
Ass't Treasurer	F. H. Meserve
Controller	E. F. Flanigan

Directors:

F. G. Kingsley
Agnes G. Milliken
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken
W. B. D. Stroud

Operating Divisions:

Farnsworth Division (included Farnsworth & Cowan Mills)
Judson Division

Operating Subsidiaries:

Abbeville Mills Corporation:

Officers:

President	Roger Milliken
Vice President & Treasurer	George Asnip
Secretary & Controller	E. A. Rice

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

General Counsel Exhibit R-27

THE COTWOOL MANUFACTURING CORPORATION:
Subsidiaries continued:

Clemson Fabrics, Inc.:

Officers:

President	Roger Milliken
Vice President & Treasurer	Ernest DeFore
Secretary	T. N. Hunnicutt

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

Excelsior Manufacturing & Merchandising Company:

Officers:

President & Treasurer	Roger Milliken
Secretary & Assistant Treasurer	E. F. Allee

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

Excelsior Mills, Inc.:

Officers:

President & Treasurer	Roger Milliken
Vice President In Charge of Operations—Clemson Division	Ernest DeFore
Vice President—Union & Rutherfordton Divisions	J. A. Meehan
Vice President—Worsted Division	George Asnip
Secretary	C. W. Kable, Jr.

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

Divisions:

Clemson Division
Union Division
Rutherfordton Division
Worsted Division (included McCormick and Johnston Mills and Pendleton Finishing Plant)

General Counsel Exhibit R-27

THE COTWOOL MANUFACTURING CORPORATION:
Subsidiaries continued:

Gayley Mill Corporations:

Officers:

President & Treasurer	Roger Milliken
Vice President In Charge of Operations	A. B. Sibley
Secretary, Assistant Treasurer, & Controller	R. L. Collett

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

Hatch Mill Corporation:

Officers:

Chairman of the Board	H. A. Hatch
President	Roger Milliken
Vice President & Treasurer	J. A. Meehan
Secretary	R. N. Jones

Directors:

H. A. Hatch
F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

Kingsley Mill Corporation:

Officers:

President	F. G. Kingsley
Vice President	Roger Milliken
Treasurer	A. B. Sibley
Secretary & Ass't Treasurer	R. L. Collett

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

General Counsel Exhibit R-27

Kingstree Manufacturing Co., Inc.:

Officers:

President	Roger Milliken
Vice President & Treasurer	J. A. Meehan
Secretary	M. C. Stone, Jr.

THE COTWOOL MANUFACTURING CORPORATION:
Subsidiaries continued:

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken

Machias Mill, Inc.

Officers:

President	Roger Milliken
Vice President & Treasurer	A. B. Sibley
Secretary & Controller	R. L. Collett

Directors:

F. G. Kingsley
G. H. Milliken, Jr.
Minot K. Milliken
Roger Milliken
A. B. Sibley

General Counsel Exhibit R-29

FROM: Mike Gildea

Deering Milliken Research Corporation
Box 1927
Spartanburg, S. C.

FOR RELEASE: AM 12/28/60

Photos available via AP Wirephoto on request to Spartanburg Journal.

SPARTANBURG, S.C., December 28—The appointments of three manufacturing division presidents of Deering Milliken, Inc., were announced today by Roger Milliken, President of the firm.

Alan B. Sibley will head the Fine Goods Manufacturing Division; George Asnip, the Worsted Manufacturing Division, and Joseph E. Meehan, the Woolen Manufacturing Division.

The Fine Goods Manufacturing Division includes Judson Mills, Greenville, S. C.; Gerrish Milliken Mill, Pendleton, S. C.; Kingsley Mill, Thompson, Ga., and Machias Mill, Machias, Me. Mr. Sibley will retain his duties as Vice President of Drayton Mills, Spartanburg, and Hartsville Mill, Hartsville, S. C.

Mills in the Worsted Manufacturing Division include Abbeville Mills, Abbeville, S. C.; McCormick Mill, McCormick, S. C.; Johnston Mill, Johnston, S.C. and Excelsior Finishing Plant, Pendleton, S. C. Mr. Asnip will continue as Treasurer of Laurens Mills, Laurens, S. C.

Included in the Woolen Manufacturing Division are Excelsior Mills, Union, S. C. and Rutherfordton, N. C.; Hatch Mill, Columbus, N. C.; Cowan Mill, Lewiston, Me.; Farnsworth Mill, Lisbon Center, Me. Mr. Meehan also is Treasurer of the Kingstree Manufacturing Co., Kingstree, S. C.

General Counsel Exhibit R-30

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
ELEVENTH REGION

In the Matter of DARLINGTON MANUFACTURING COMPANY, ROGER MILLIKEN, DEERING, MILLIKEN & CO., INC. and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO	Case No. 11-CA-1071

Stipulation

IT IS HEREBY STIPULATED by the attorneys for the respective parties hereto that, in lieu of offering evidence as to any of the matters herein referred to, and solely for the purposes of this proceeding, the facts stated below are to be deemed true as of December 1, 1960:

Members of the Milliken family (meaning the lineal descendants of Seth Milliken) own a majority of the voting shares of Deering Milliken, Inc., by direct ownership of such shares and by ownership of a majority of the voting shares of one or more corporations which own shares in Deering Milliken, Inc.

Dated: Winston-Salem, North Carolina
February 5, 1962.

/s/ Jerry B. Stone
For the General Counsel

/s/ Patricia E. Eames
Attorney for Charging Party

General Counsel Exhibit R-30

PRICE & POAG

by /s/ John R. Schoemer, Jr.
Attorneys for Respondent Darlington Manufactuirng Company

TOWNLEY, UPDIKE, CARTER & RODGERS

by /s/ John R. Schoemer, Jr.
Attorneys for Respondents Deering Milliken, Inc. and Roger Milliken

The following material was inadvertently omitted by the printer from the original bound volumes of the Joint Appendix in the Court of Appeals. It was printed as an appendix (pp. 176-182) to the NLRB's Brief to the Court of Appeals.

APPENDIX

The printer inadvertently omitted from the joint appendix the following portions of General Counsel's Exhibit N 1. The remainder of the exhibit appears at J.A. 1677.

DATE: November 14, 1956

TO:

Mr. C. E. Anderson	Mr. T. E. Peden
Mr. George Aship	Mr. I. S. Pitts, Jr.
Mr. J. M. Bailey	Mr. H. L. Pratt
Mr. D. I. Beal	Mr. H. B. Risher
Mr. S. J. Craig, Jr.	Mr. J. V. Roberts
Mr. E. O. DeFore	Mr. G. G. Simmons
Mr. L. C. Ellis	Mr. F. A. Thompson
Mr. J. A. Ferguson	Mr. W. E. Thrailkill
Mr. L. J. Fisher, Jr.	Mr. M. G. Wallace
Mr. Winston Garth	
Mr. C. T. Holland	Mr. R. H. Bush
Mr. J. M. Jackson	Mr. H. C. Byrd
Mr. W. S. Manning	Mr. Harry Defore
Mr. J. A. Meehan	Mr. K. M. Lowry
Mr. W. H. Moore	Mr. R. B. Newton
Mr. J. J. Norton, Jr.	Mr. S. L. Smith
Mr. R. C. Owings	Mr. T. D. Truluck

FROM: Roger Milliken

Attached hereto is an article from the November eighth issue of AMERICA'S TEXTILE REPORTER. I am sending it to you in case you have not had an opportunity to see it. It is apparent from this article that this magazine made a real investigation in Darlington, and for that reason, I think the article is interesting.

While this article shows that the union leaders definitely misled the people, it also points out that the mill was negligent in its public relations. I hope that you will read this second part of the article care-

fully and review in your mind the steps that you are taking to bring about an understanding of your mill and its problems in your community. The unions are going to be making a tremendous drive all through this area, and there are few things that are more important to us than making sure that the leaders in your community understand and are sympathetic to what you are trying to do.

Enclosure

cc: Mr. A. B. Sibley
Mr. W. A. Sibley
Mr. M. C. Stone

DARLINGTON SITUATION BECOMES OBJECT LESSON TO ALL CONCERNED

Present Stepped-Up Union Activity in South Harbinger of Stronger Efforts and More Exaggerated Promises To Come

The Darlington (S.C.) Mill affair is becoming a tangled mess. And the question most frequently asked in textile circles, how does a community of 500 mill workers who admitted satisfaction with their wages, work loads and working conditions in a well equipped mill, suddenly elect to place their future in the hands of strangers representing the Textile Workers Union of America?

Hundreds of answers have been forthcoming from Darlington during the past few weeks since an NLRB election was won by the union by a slim margin of eight votes; 256 for the union and 248 against.

In order to sift the charges and counter-charges of management and labor and the workers themselves, a Reporter editor visited the town of Darlington and interviewed the Mayor, Chamber of Commerce, Sec-

retary, bankers, gas station operators, hotel managers and several of the workers from the mill.

The picture proved a confusing one, but the pattern and the reasons for the worker's unfortunate choice, become more apparent as the workers themselves repeated over and over that they did not want the union, they were satisfied with their jobs and the pay, but many voted in favor of it because the organizers threatened their future.

As it stands now, the stockholders of the company voted on October 17 to liquidate the mill at public auction on December 12 and 13. Stock in process is being run out at the mill, with about half of the employees already laid off as of October 23.

The events leading up to the election and the problems facing the employees and management of the Darlington mill, the union threats and promises stand out as the most important factor.

This was affirmed by personal interviews with workers, Mayor Thomas W. Buchanan and Chamber of Commerce Secretary, Joseph Funderburk. Some affidavits from over a dozen former Darlington workers attested to the fact that union organizers called on them at their homes and repeated statements to the effect that if they failed to vote the union into the mill, management would make their working conditions unbearable, and that there was nothing the mill could do about liquidating or closing the mill once the union was in control.

Again and again in personal interviews with these Darlington workers, many of whom were dismissed from their jobs a day after the liquidation vote, the promises of the union were uppermost in their minds. One card fixer who asked that his name not be used said, "They promised us everything at the union meetings, nothing on paper or anything like that, but

after the election when the mill voted to close, the best they could suggest was that we get individual lawyers and sue the mill for firing us out of our jobs."

"And the union fellows—the big men who spoke to us last Sunday promised that the union would have an investigation." The former Darlington worker was not bitter as he continued to relate the happenings at the Sunday, October 21 meeting, adding "The man (Boyd E. Payton, Southern TWUA Director from Charlotte, N.C.) said the whole union will be used for our best interest. He even said he was going to Washington to fight for us. But that's no good now, for I'm out of my job. I went into work the day after the stockholders' voted to close the mill, last Thursday it was, and I was told I was all through."

Going back a few weeks before the union election took place, it was Mayor Buchanan who told of his talks with several of the mill workers. They outlined to him that the Union was gaining a foothold. Darlington is a small city, a central square where the court house and Federal buildings overshadow the city hall. The mayor has his office in the rear of his jewelry store. While he was being interviewed he had several visits from local business men, the Chamber of Commerce Secretary and the head of one of the local banks. They joined him in the discussion of the mill situation and showed real interest and a full knowledge of the problem. Of course they were interested from an economic standpoint because although the word had been out less than a week that the mill would definitely close, business activity in the town was at a standstill. Stores were empty, the streets were deserted and four policemen were standing together in the square, talking, presumably to keep from being bored.

A gas station operator said business had dropped to half his former volume during the past two weeks and he was not taking any more charge accounts except those guaranteed by the gasoline company. The local savings bank was checking mortgages and payments and although there was not any increase in money withdrawn, there had been a noticeable decrease in deposits over the week-end.

Even the newsstand had papers left over following the first rush a week before to learn if the mill definitely would close. Everywhere the same story was repeated, "if only the union had left our people alone we could have gotten along fine." The man who pumped the gas at the gas station had a wife and mother who were working in the mill. They did not vote for the union but he said, "they have got to suffer along with the rest who listened to the promises of the union fellows."

The greatest resentment seemed to center among those who believed that the Union organizers had "gone too far" in making promises at meetings in trying to convince the workers that a few paid holidays were worth giving up their freedom for union domination. Incidentally the paid holidays seemed to be the only actual offer made by the union other than many promises to do what they could to change the management of the mill.

A worker who voted for the union said, "I had no complaints only that they were going to put in a conveyor to handle the cans from the cards and drop one card hand. That would mean I'd a had to do my card stripping and handle the cans too, with more work for the two card hands running 136 cards. The Union fellow told me if they got the vote he'd keep it the old way of three card hands, and one stripper to the 136 cards with no conveyor. That's why I voted for the union," he concluded.

Of course the union man who was to have made this statement, knew that he could not prevent the installation of more efficient means of transporting card sliver, but it was this type of deceptive promise that showed up throughout the interviews with the various workers.

The lesson to be learned from the problems of Darlington for both management and labor is that the extent to which the union will go to make promises, and also the importance of direct communications between the workers and management which must be specific and flawless. Labor counsellors have repeatedly warned that the most important weapon management holds, to use in warding off unionization, is to make everyone in the mill a part of a team; make them feel a part of the success or failure of the mill in its every operation. The sense of accomplishment of the team can overcome the group or individual promises made by union organizers.

The final lesson to be learned from the Darlington affair is the need for good public relations. Properly operating, year round, public relations contact on a local and national level for large firms, operating in several areas, is of utmost importance. This was indicated again and again in discussions with Darlington officials who decried the utter lack of any attempt of public relations before, during or after the union attempted its move to take over the company.

It seems that the people of Darlington, S.C. have suddenly come face to face with the basic labor management problem: Who is going to manage? We concede that stockholders of a corporation such as the now liquidated Darlington Manufacturing Company, being the proprietors of the company, select the management of the mill and expect that the management shall allocate the job, delegate the wages and sell

goods at a profit. We further contend that the community has a certain responsibility to see that such a co-operative civic climate will exist as to assure the proprietors of the company a fair competitive chance. If the people of Darlington knew anything of the Deering, Milliken record they would know that the management does not intend an unprofitable division nor has it intended to share the prerogatives of management with labor union leaders. This has been the case through three generations of Milliken operations. When the Madison Woolen Mills of Madison, Maine, became not only unprofitable but unionized, Mr. Gerrish Milliken liquidated it, although the Cowan and Farnsworth Mills in the State of Maine still operate and must, therefore, be profitable. When the Dallas Manufacturing Company of Huntsville, Alabama, became unionized, the Millikens liquidated it, contrary to the opinion of many local people that such would not be the case. We ourselves are small shareholders in Darlington and from experience and acquaintanceship, we knew the minute the union election vote was announced that we would receive a call for a special meeting to vote for liquidation. We know something about the effect of mill losses to a community having lived through hundreds of them in the Northeast. On the other hand, as one of the owners of Darlington even though an infinitesimal percentage of those shares is held in our name, we could do nothing other than vote to terminate the operations of the company if management responsibility was going to be shared with the Textile Workers Union of America.

APPENDIX II

Material Omitted by Error from Volume III of Joint Appendix

The following material was inadvertently omitted by the printer from the original bound volumes of the Joint Appendix in the Court of Appeals. It was printed as Appendix II (pp. 1239a through 1239u) to Deering Milliken's Brief to the Court of Appeals.

Hearing at Winston-Salem, N. C.
February 5, 1962

[3743] MINOT K. MILLIKEN was called as a witness by and on behalf of Counsel for General Counsel and, being first duly sworn, was examined and testified as follows:

* * * *

Trial Examiner: Address?

The Witness: 186 E. 64th Street, New York City.

* * *

[3746] Q. Was Mr. Roger Milliken the one that initiated this idea of the merger? A. Mr. Stone, it is hard to say. The discussions took place over a period of time; I can't honestly say that he initiated it or not; I certainly think it would be likely, but I am not certain.

* * *

[3747] Q. Now what was done in this merger; what actually happened; just tell us what the merger accomplished? A. It merged Deering Milliken & Co., Inc. into the Cotwool Manufacturing Company.

Q. What changes were brought about by the merger; actually, in [3748] operation, were the mills run in the same manner? A. The basic change was that the same stockholders, after the merger, owned the assets of the Cotwool Manufacturing Company, which were in part manufacturing divisions, manufacturing entities, and the assets of Deering Milliken Company, which was a function of Deering Milliken, was the selling and factoring functions. Prior to that time, Deering Milliken Company had no manufacturing. I should add at this point, Mr. Stone, that I think you know, of course, that the manufacturing divisions of Cotwool sold their products either through Deering Milliken Company or through its wholly owned subsidiaries, Milliken Woolens.

* * *

[3749] Q. Well, now in the prior—Deering Milliken Co., Inc., you say, was in factoring part of the game, is that right? A. Selling and factoring and other related services, which we tried to render to the mills, yes, sir.

Q. After the merger, Deering Milliken Inc. continues to sell and factor, is that correct? A. Continues; Cotwool became a selling agent for the first time, when it absorbed the selling agency of Deering Milliken & Co.

Q. Its taking the people who were engaged in the selling functions for Deering Milliken Co., Inc.? A. Yes, sir.

Q. Are they continuing to do substantially the same type of work for Deering Milliken Inc. as they did before? A. Yes, sir.

Q. Do they have any added duties or responsibilities? A. Not as a result of the merger.

Q. Not as a result of the merger; all right, taking the people who are engaged in working in Cotwool, that's the manufacturing? A. Yes.

Q. Are their duties substantially the same for Deering Milliken Inc. that they had prior to the merger? A. Yes, sir.

* * *

[3751] Mr. Stone: As I understand it, from the witness' testimony, the name-holding corporation, and the corporation was set up [3752] in 1960 in Delaware, gave up its name and started holding another name, Cotwool.

Trial Examiner: Gave up its name and——

Mr. Stone: Gave up its name, Deering Milliken, Inc., to Deering Milliken Co., Inc., Cotwool Manufacturing Company merged; that was whatever name, Cotwool, and they swapped Cotwool back to the name-holding one and the functioning merged corporation took over the Deering Milliken Inc. as its name.

Trial Examiner: Yes, took over the name; when you said it gave up its name to Cotwool, that suggested to me, at least, that Cotwool was the name that was perpetuated so far as the organization was concerned. You didn't mean that; the name is Deering Milliken Inc. as a successor name, shall we say: or maybe that's not the correct phrase; to Cotwool.

Mr. Stone: Right; Cotwool was what came out of the merger, according to this; and then Cotwool gave its name to the name-holding corporation; and took Deering Milliken, Inc., isn't that correct?

Mr. Schoemer: I think so, yes.

Trial Examiner: All right.

With the agreement of counsel, we are receiving this as evidentury.

Mr. Schoemer: No question about it.

* * *

[3756] Q. Now, you may not have. You state, now, that one of the problems of the merger was administrative problems? A. Yes, sir.

Q. Was this, what were these administrative problems? A. One particular one that comes to mind is that the—let me start again; Deering Milliken receives its income from the mills from which it sells. The commission rates are obviously competitive with other selling houses. The cost of doing business over the years, has gone up, as we all know. We, in the sales organization, believe that we should expand our services to the mills, with the result that the profit margins were reduced, and in fact, in 1958, Milliken Woolens, which sold for certain of the Cotwool mills, was actually receiving insufficient commission income to pay its expenses. Well, this was crazy; I mean, it seems to

those of us who looked into this situation. We suggested, and in fact, an increase in commission was put through; but this was, in a sense, a conflict [3757] of interest between Cotwool and Deering Milliken through its subsidiary corporation, Milliken Woolens.

Q. How would that be a conflict of interest? A. Because the mills, the best way for the mills to make money, is for the selling agency to provide, or I should say, the only way, but the best way is to provide the best possible services to the mill which it represents, and if we increase the functions and expand the activities of the selling organization, it costs money for the selling organization; however, the benefits to be derived accrue to the mills far more than they do to the selling organization.

Q. You may have gone into it; but after the merger, would you tell us how the merger solved this particular problem? A. Well, the expenses of the mills and the expenses of the New York sales office were, with the same company—we are talking about the Cotwool mills—there was no conflict of interest between a Cotwool stockholder versus a Deering Milliken stockholder.

Q. Now, of Deering Milliken & Co., Inc., who determined the scope of the service? A. There is no one person, Mr. Stone. Mr. Roger Milliken, I, the Vice-President in charge of sales, the department heads; I might add that the mill management made suggestions from time to time as to how the selling agency could improve the selling agency; there was a number of people.

* * *

[3758] Q. Referring to the press release, which is General Counsel's Exhibit R-29; I may skip around; but I don't mean to too much; the press release announced the divisional set-up, is that correct? A. Yes, sir, it does.

Q. Prior to the time of this press release, had there not been a divisional set-up in existence as far as Cotwool was concerned? A. Yes, there was some manufacturing divisions of Cotwool, yes.

Q. What change, if any, came as a result of this announced new divisional set-up? A. I'm sure I understand your question?

Q. What happened in December, 1960, to change the set-up as it existed prior to the merger? A. Well, there was no change except that some of the subsidiary corporations of Cotwool, in November I believe it was, or maybe December of 1960, were merged into the parent, if that answers in response to your question.

Q. Mr. Sibley, for example, who was announced to be in charge of one of the divisions, what was his duties prior to the press release announcement? A. The duties of Mr. Sibley prior to November of 1960 was that [3759] he was in charge of manufacturing of the Judson Mills, which was a division of Cotwool; Drayton Mills in Spartanburg; the Hartsville Mill, cotton mill, the Gayley Mill in Marietta, Georgia; I believe the Machias Mill in Machias, Maine, in addition to which he was in charge of manufacturing at the Gerrish Milliken Mill, which is a division of the Packlet Manufacturing Company.

Q. Now, this announcement, when did this divisional set-up actually occur; I mean it was announced in December, but when did it happen? A. It was announced in December, the appointment of officers; the set-up was what it was in June, at the time of the merger.

Q. In other words, June, when you had the merger, you had the divisional set-up? A. Again, that isn't true, because the Excelsior Mills and the Hatch Mill, and maybe

the Kingsley Mill, all of which were wholly-owned subsidiaries of Cotwool, were merged into the parent, on the last day of the fiscal year of 1960.

Q. That would be some time in June? A. No, the last of the fiscal year would be the Sunday nearest November 30th.

Q. The mills that were involved, Excelsior; did they continue to be in the same place as far as manufacturing was concerned? A. We didn't move any buildings.

Q. The buildings stayed there; did the same people have [3760] responsibilities for the operations? A. Yes, sir.

Q. Prior to that time? A. Yes.

Q. Who was that; in Excelsior, for example? A. Mr. Joseph Meehan was in charge of the Excelsior Mill. He was in charge of the Hatch Mill; he was in charge of the Farnsworth Division; and he was in charge of the Kingstree Manufacturing Company.

Q. Now, Mr. Sibley, let's go back to him; did his duties change in any way, in any respect as a result of the new divisional set-up? A. No, I don't believe his duties did; I can't recall that they did.

Q. Did he have anything to do with Packlet? A. Yes.

Q. The cotton division? A. Yes. Oh, no, sir.

Q. But he had the Gerrish Milliken Mill? A. Yes.

Q. Did he continue after this announcement to have the same responsibility at Gerrish Milliken that he had before? A. I believe the answer is yes.

Q. Was that substantially the same responsibility with Gerrish Milliken Mills as he had with the Judson Mills or Kingsley Mills? [3761] Did he have the same responsibility with all of them? A. Yes, I think he testified that he was in charge of those three, as well as Gayley, Hartsville and Drayton. I think I'm correct on that.

Trial Examiner: Its my impression that you told us that he was president of the various mills and in charge, I think, of, not president, but some other title, in charge of Gerrish Milliken, which is a division of Packlet, and with duties with respect to all of those, whether it was president or had another title, similar, would it be similar?

The Witness: Yes, sir, I believe Mr. Sibley was the Vice-President of the Packlet Manufacturing Company, in charge of the Gerrish Milliken Mill.

Q. (By Mr. Stone) Did Packlet have other mills? A. Packlet has other cotton mills, yes.

Q. Who is over those? A. What time are we talking about?

Q. June, 1960. A. I believe this is subject to a check. Mr. Marshall Stone was president, Mr. J. J. Norton was treasurer of the Packlet Manufacturing division, which has mills in Packlet, South Carolina, Gainesville, Georgia and New Holland, Georgia.

Q. Were these other mills attached as administrative mills to any of these divisions that were created in June of 1960? A. Attached to the divisions of Cotwool or Deering Milliken?

[3762] Q. Deering Milliken. A. Indeed not.

Q. How about Gerrish? A. No, there was, it was a division of the Packlet Manufacturing Company.

Q. Which Mr. Sibley continued to—— A. He was in charge of manufacturing.

Q. And his functions were substantially the same as far as Deering Milliken was concerned, as it was for the Judson Mills, is that correct? A. Yes, to the extent that

the mills were somewhat different in the character of the goods that they manufactured. Mr. Sibley was in charge of manufacturing at all of the mills that I have enumerated; and as such, he had the same, or almost identical responsibilities.

Q. Did the method of reports on quantity and orders or anything change after the June, 1960 merger, of these various mills? A. I don't believe so; nothing of a substantial nature. Of course, our sales notes were changed, but that's just the name.

Q. Name only? A. I don't think anything of substance was changed as a result of the merger.

Q. Was there any difference at all in the direction of any [3763] of these mills after the June '60 merger? . . . Well, the Board of Directors was changed, but the officers and the management personnel maintained basically the same functions.

* * *

Q. (By Mr. Stone) Not other mills not included in the ones which are listed here on GC R-29, under the Fine Goods Division, but in addition to Gerrish Milliken, what other mills, what other goods are sold through the Fine Goods Division? A. I believe they are all listed here with the exception of the Gayley Mill Division; Gayley Mill is now a division of Deering Milliken.

[3764] Q. Gayley is a division? A. Its a division of the Excelsior Division of Deering Milliken.

Trial Examiner: Let me get this; I haven't seen the press release, GC 29; Gerrish Milliken Mill is not what?

The Witness: It is a division of the Packlet Manufacturing Company, and not a division of

Deering Milliken, and I need not add that Packlet is not a division of Deering Milliken.

* * *

Q. (By Mr. Stone) Where are the goods for Packlet sold, from which division; are they sold through any division of Deering Milliken Inc? A. The cotton goods are sold in the cotton sales department of Deering Milliken, Inc. and the synthetic goods are sold through the Fine Goods Division, sales division of Deering Milliken.

Q. Packlet's goods are sold through the sales department, the cotton sales department? A. The cotton division, yes.

Trial Examiner: Are you saying, in effect, that the same relationship, or a similar relationship exists now between Deering Milliken, Inc. and Packlet, as existed before the merger, between Deering Milliken, Inc. and some of the other manufacturing mills?

[3765] The Witness: Yes, sir. The relationship is one of selling agent and factor for a textile mill corporation.

Mr. Schoemer: You understand, Mr. Examiner, that before the merger, it was Deering Milliken and Co., Inc.

Trial Examiner: Yes, but the relationship between Deering, as between Deering Milliken & Co., Inc. and various mills, the witness told us about conflict of interest, and so on, but whatever that situation was before the merger appeared to me to be similar, and this was the reason I was asking, similar in relationship between Deering Milliken Inc. and Packlet now.

The Witness: May I state it this way; the relationship between Packlet and Deering Milliken & Co. prior to the merger, is substantially the same as the relationship today between Packlet and Deering Milliken, Inc., and there was never any conflict of interest relating to Packlet before or after the merger.

Trial Examiner: Well, I could ask you why.

The Witness: Because the conflict of interest is only between Cotwool and Deering Milliken & Co., Inc.

Trial Examiner: I see.

The Witness: The Packlet trades, to the best of my knowledge, have not changed in several years, the selling commission, that is.

Q. (By Mr. Stone) Who is over your cotton sales division? A. At the present time?

[3766] Q. Yes, sir. A. Mr. C. R. Clausen is directly responsible for the bulk of the carded cotton sales, and he reports to Mr. J. C. Harris. Both of these gentlemen are Vice-Presidents of Deering Milliken.

Q. When was that division set up? A. Of Deering Milliken and Company; the cotton sales division was set up many, many years ago.

Q. And it continued on as Deering Milliken, Inc.? A. Yes, sir.

Q. Where does Gaffney sell, who handles the sale of Gaffney? A. The bulk of the sales of Gaffney Manufacturing are through the carded cotton department under Mr. Clausen.

Q. How about Monarch? A. The same answer.

Q. How about Laurens? A. Laurens?

Q. Yes. A. Laurens has some production sold through Milliken Woolens.

Q. Would that be under the Woolen Manufacturing Division? A. Under the Woolen Sales Division. I think it's fair to say that the balance is sold by Deering Milliken under Mr. Harris; most of it in the Fine Goods Division.

Q. Mr. Asnip, what was his duties in connection with Laurens? A. He is in charge of manufacturing at Laurens, I don't know what his title is; he has the corporate office at Laurens [3767] Mills.

Trial Examiner: Is it correct to say, generally, that Deering Milliken Inc. has continued the sales functions which were previously performed by Deering Milliken & Co., Inc.?

The Witness: It is, yes, sir.

Q. (By Mr. Stone) Now, who handles the manufacturing, say, for Packlet? A. Mr. J. J. Norton. Are you talking about the cotton divisions?

Q. Yes, sir. A. Mr. Norton.

Q. How about for Gaffney? A. Mr. Alfred New.

Q. How about Monarch? A. Monarch is Mr. W. Sibley; not to be confused with Mr. A. B. Sibley. Mr. Sibley is in charge of Monarch and Monterey plants; Mr. New is in charge of manufacturing of the Lockhart Plant.

Q. Do any other persons, other than Norton, or Packlet, is there anyone like Mr. Sibley or Mr. Asnip, or Mr. Meehan; do any of those gentlemen have anything to do with the manufacturing at Packlet? A. Yes, Mr. Sibley is in charge of the Gerrish Milliken Division.

* * *

[3768] When you say Mr. Sibley, you are referring to Mr. Alan Sibley?

Q. That's right.

It was announced, I believe, that Mr. Sibley would retain his duties as Vice-President of Drayton, Spartanburg, and Hartsville Mill, and the Gerrish Milliken Mill; he did retain his duties at Gerrish Milliken? A. I can't remember exactly, but Mr. Sibley is no longer connected with the manufacturing—is that at Gerrish Milliken? Excuse me.

Q. Yes. [3769] A. Yes, he was, and is.

Q. Has there been any actual change in your selling system; I mean, as far as the selling function of Deering Milliken, Inc. as compared with Deering Milliken & Co., Inc.?

Mr. Schoemer: Do you mean as a result of the merger?

Mr. Stone: As a result of the merger.

The Witness: I believe the answer to that is no. Prior to the merger, there was an increase——

Mr. Schoemer: This couldn't be——

The Witness: The answer is no. I can think of none.

* * *

Q. (By Mr. Stone) Now, as a result of the merger, there were other minor mergers, is that correct? In combination with the merger, you had some other corporations merging into the parent, is that correct? A. In late November, early December, of '60, some of the subsidiaries of Cotwool, then Deering Milliken & Co., Inc., were merged into the parent, Excelsior, Abbeville, Kingsley, Hatch.

Mr. Schoemer: Is that it?

The Witness: I think that's correct.

[3770] Q. (By Mr. Stone) Now, as corporations, they no longer exist, they are—— A. They are now divisions.

Q. Now, Gayley—— A. Gayley was merged into Excelsior and Gayley was a wholly owned subsidiary of Cotwool, and I believe on June 12, 1960, Gayley was merged into Excelsior.

Mr. Schoemer: That's right.

The Witness: Which was another wholly owned subsidiary of Cotwool.

Trial Examiner: Are most of these Delaware corporations?

The Witness: Some are Delaware and some are South Carolina, Mr. Buchanan.

* * *

Q. (By Mr. Stone) The Milliken Yarn also was one of them, is that correct, that was merged into the Deering Milliken, the yarn sales? A. Was that when——

[3771] Q. I believe it was November, 1960. A. All right, yes, sir.

Q. I believe Deering Milliken Export Corporation? A. Yes, sir, those were subsidiaries of Deering Milliken Company, not Cotwool.

Q. Now these corporations that were merged, did they retain their names? A. Yes, in part; they are known as the Excelsior Mill, a division of Deering Milliken, Inc.

Q. What, if any, difference is there in the mode of operations of those mills, as far as control? A. Those mills being, shall we take Excelsior for example?

Q. Yes. A. Basically, none.

Q. In other words, the same reports are made on quality, quantity? A. Oh, yes, this had nothing to do with the practicality of manufacturing.

* * *

[3772] Q. (By Mr. Stone) As far as your administrative problems, which resulted in the merger, what problems did you have, if any, [3773] in regards to operations concerning Packlet? A. None, the administrative problems existed only between Deering Milliken Company and Cotwool.

Q. Didn't you perform or didn't you give the same services to Packlet that you gave to others? A. Yes, but there was no conflict of interest. Where Packlet sold through Deering Milliken & Company or Deering Milliken, Inc. made no difference, as far as stockholders of the two companies were concerned. The problem was the manufacturing divisions of Cotwool, for example, Excelsior, selling through Deering Milliken & Company, the ownership of Cotwool and Deering Milliken & Company not being the same, where we were expanding our services in Milliken Woolens at great cost to Woolens, the large benefits which would be derived by Excelsior, because this was the manufacturing mill. It ceased to be, well, perhaps, equitable would be too strong, but I'll use that word.

Trial Examiner: This isn't quite clear; are you telling us that the manufacturing divisions of Cotwool were not owned by the same people who owned Deering Milliken & Co.?

The Witness: That is true; may I expand my answer?

Trial Examiner: I can understand that. But I don't quite understand how that answers the question you were asked about the absence of the conflict of interest between Deering Milliken and Packlet.

[3774] The Witness: The manufacturing divisions of Cotwool, to which I had reference, were made finished goods which were sold through Milliken Woolens. The Packlet Manufacturing Company, for example, sold no finished goods; it sells only greige goods, manufactures only greige goods. The costs connected with finished goods are far greater; there is an element of styling that is far more important and more costly than the selling of greige goods. It was these costs which were going up over the years, and Milliken Woolens was providing styling, designing, market development, fabric development; I mean Market research, fabric development, and services, at an ever-rising cost. The services were primarily for the benefit of the mills who were manufacturing the finished goods. In this way, we had Corporation "A", Milliken Woolens, paying for the costs, the benefits of which were largely derived by Corporation "B", the Finished Goods Mills which were owned by Cotwool.

Q. (By Mr. Stone) When you use the term "conflict of interest", isn't it true here that the Milliken family owns the controlling interest in these mills, such as Packlet? A. Directly and indirectly?

Q. Right. A. It is true at Packlet, yes.

Q. And they own and control Cotwool in the same manner? A. No, that is really not true, because the Milliken family, [3775] taken as all descendants of my grandfather, it is true, but as I said earlier, my immediate family, with the exception of myself, owned no shares of Cotwool; they did own some stock in Deering Milliken & Company.

Q. Except—if I'm not correct, correct me—except through your ownership in Deering Milliken, Inc. or other corporation, that the Milliken family did own and control Cotwool, is that correct? A. Prior to the merger?

Q. Right. A. No, I'm just testifying that my brother, for example, owned no Cotwool; but it is true, if you call the Milliken family, descendants of my grandfather, which would include my cousins, Roger Milliken, his sisters and brother; the Hatch family, with Mrs. Hatch being my father's sister; it is true that that group of people, and their decendants, did own directly or indirectly control of Cotwool and Deering Milliken.

* * *

[3776] The Witness: They owned the majority of both Deering Milliken Company, and——

Trial Examiner: The majority of shares, of both Deering Milliken Company and Cotwool.

The Witness: But individual ownership by the various descendants was not the same in both corporations.

* * *

[3779] Q. (By Mr. Stone)—when you are speaking, actually, in terms of conflict of interest, what's really, now correct me on this, what you are really saying, you and your close family owned more stock in Deering Milliken Inc. and Company, Inc. at the time, is that correct? A. Yes, sir.

Q. And you didn't own much stock, or any, in Cotwool? A. Yes, sir.

Q. And you didn't own, you may or may not have owned, stock in Packlet? A. That's correct.

Q. Did you own stock in Packlet? A. I personally did, yes. [3780] I think no other member of my immediate family did.

Q. Now, the thing that you are faced with here, as far as conflict, and if I'm wrong, its your testimony and not mine, but the conflict is insofar as the Deering Milliken Company, Inc., it was possibly losing money, or not making as much as it thought it should out of its operation as far as Cotwool is concerned, is that correct? A. That is basically correct.

Q. Because of this added stress on selling and styling and services that you are putting in? A. Yes, sir.

Q. That you are furnishing. Now, you were not furnishing those type of services for Packlet? A. That is correct; we were not.

Q. So you didn't have an imbalance so far as Packlet was concerned, and you didn't consider that you had a conflict of interest; by conflict of interest, you don't think that you are getting quite as much return? A. Well, we didn't have the same problem, that is correct.

Q. But if Packlet had that problem, that your services were outreaching what you were getting out of Packlet, then you would be faced with the same problem that you were being faced with as to Cotwool and Deering Milliken? A. We think something would have to be done in the form of increased commissions or something.

[3781] Q. That's the question, I think we have it clear now on that. As to insurance, do you know whether or not that the same insurance plans that were in effect as far as Deering Milliken & Co., Inc. continued under Deering Milliken, Inc.? A. I believe so.

* * *

[3782] The Witness: May I answer this way; that the merger resulted in no change of the Packlet insurance plan as far as I know.

Q. (By Mr. Stone) In other words, if there was a plan which was by company-wide; or by using my terminology, I mean that would cover all of the mills in Cotwool, Deering Milliken & Co., Inc., and maybe these other mills that continued to be independent; if there is one plan that covered them all, it continued.

Mr. Schoemer: I will object to that on the classic ground that it is a statement of facts not in evidence.

Mr. Stone: My question is a real simple one; was there any change?

Mr. Schoemer: I have no objection to that.

The Witness: I have tried to answer; the insurance coverage in the mills such as Packlet and Monarch, to the best of my ability, best of my knowledge, changed not at all as a result of the merger of Cotwool and Deering Milliken Co.

* * *

[3786] Trial Examiner: Is the correct answer, then, that all former Cotwool Manufacturing mills are now part of Deering Milliken, Inc.?

[3787] Mr. Schoemer: That is correct.

Trial Examiner: As a wholly owned subsidiary or a division?

Mr. Schoemer: Yes, that is correct.

Q. (By Mr. Stone) Is there any difference in the operation of these wholly owned subsidiaries and those mills which are in the division? A. Not by virtue of their being subsidiaries instead of divisions, no.

Q. Substantially the same type of direction in quality control and all that that is used? A. The subsidiary corporations obviously have their own Boards of Directors, and their own officers; but the manufacturing aspects, as I understand it, are, as I understand the division of Deering Milliken would not be different than a wholly owned subsidiary of Deering Milliken.

Q. Is there any difference between one of these Packlet type mills that Mr. Norton has, as far as the operation and one of the mills considered integrated in one of your divisions? A. Let us——

Q. Let's take manufacturing. A. One is a cotton mill and the other is—there are very substantial differences; and the processes and important functions of cotton manufacture versus filament yarn, and let's say, woolen and worsted manufacture.

Q. You have the same system as far as selling, and all these [3788] other aspects? A. The same company sells for the three classifications of mills, assuming that Milliken Woolens is the same company as Deering Milliken for the purpose of this answer.

* * *

Q. Has there been any change since the merger in the hours or conditions of employment at the various mills which are considered to be integrated in your divisions? A. I have no knowledge of none.

Q. How about the vacation plan; so far as you know, there is no change? A. Just recently, I authorized a change in the vacation plan of Deering Milliken, the New York Sales Office; other than [3789] that, I know of no difference.

* * *

Q. How about your settlement policy? A. Settlement policy?

Q. Yes, when you sell some goods, and someone complains, what type of settlement policy do you have on complaints? A. I hope a tough and fair one; it hasn't changed as a result of the merger.

* * *

[3790] Q. (By Mr. Stone) Were there any changes in the purchasing arrangements for your manufacturing mills as a result of the merger? A. None that I can think of.

Q. Was there any change in your type of technical assistance, such as engineering assistance, or anything along that line? As a result of the merger? A. No.

Trial Examiner: What did you call it; technical assistance?

Mr. Stone: Yes.

Q. (By Mr. Stone) And the recruit men, of personnel, is that [3791] system substantially the same now as it was before the merger?

Mr. Schoemer: Would you mind rephrasing it the other way; has there been any change in it as a result of the merger.

The Witness: Not to my knowledge; I know of none.

Q. (By Mr. Stone) Answer me this if you can. Is there any change since the merger, as compared to the type of recruiting——

Mr. Schoemer: I honestly believe, Mr. Examiner, that that takes us in an area laying outside of the present inquiry; however, assuming that we don't get into this too deeply, I will not object to that particular question.

The Witness: I know of none.

* * *

[3792] Mr. Stone: In essence, what has been changed has been the ability to allocate your cost and expenses primarily by [3793] the merger, would that be a fair summary? A. Between Cotwool and Deering Milliken?

Q. (By Mr. Stone) Right. A. Yes, sir.

Q. But as far as operations and all other aspects, it is substantially like it was before the merger? A. Yes.

* * *

[3806] Trial Examiner: I don't recall now that we had that element of detail, or in very great detail, earlier; and I'm referring to Mr. Milliken's testimony this morning, that while—strike the "while"—within the Milliken group, individual interest in the two corporations differed. Now, if I'm in [3807] error in that statement, will you correct me; this is my present impression, for whatever bearing it has on the issues before us. I think we have been told, and I repeat, that if anybody thinks I'm in error, correct me now, if you will, gentlemen, I think we've been told that while there was a controlling interest in both the companies, that is, Deering Milliken & Co., Inc. and Cotwool Manufacturing Corporation, held within the Milliken family or Milliken group; that to repeat, individual interest in the two corporations did differ.

Mr. Stone: I understand that as to certain individuals, one individual might own more in one than he did in the other.

Trial Examiner: That's right.

* * *

	Original	Print
Proceedings in the United States Court of Appeals for the Fourth Circuit	1887	1887
Petition to review by Darlington Manufacturing Company and Deering Milliken, Inc., and set aside order of The National Labor Relations Board, Case No. 8790	1887	1887
Order allowing intervention of Textile Workers Union, etc., Case No. 8790	1895	1892
Answer of The National Labor Relations Board to petition for review of its order and cross-petition for enforcement of said order, Case No. 8790	1896	1893
Opinion, Bryan, J., Case Nos. 8790, 8861, 8906	1898	1894
Dissenting opinion, Bell, J	1911	1902
Decree, Case No. 8790	1928	1915
Order amending opinion, dated December 9, 1963	1929	1916
Order of the U.S.C.A. for the District of Columbia Circuit granting motions of Darlington Manufacturing Company and Deering Milliken, Inc., to intervene in No. 17335, dated December 17, 1962, etc	1931	1917
Appearance by intervener in No. 17335 filed in the U.S.C.A. for the District of Columbia Circuit	1932	1918
Petition to review, filed by Textile Workers Union, in the U.S.C.A. for the District of Columbia Circuit in No. 17335 on October 18, 1962	1933	1919
Answer of NLRB to petition for review in No. 8861	1937	1921
Amended petition to review, filed by Textile Workers Union, in No. 8861	1939	1922
Answer of the NLRB to amended petition for review in No. 8861	1942	1925
Decree, Case No. 8861	1944	1926
Petition for enforcement in No. 8906, against Deering, Milliken and Company, Inc.	1945	1927
Order granting NLRB's motion for consolidation in Nos. 8790, 8861 and 8906	1947	1929
Answer of Deering, Milliken, Inc. to petition for enforcement in No. 8906	1948	1930
Response of NLRB to answer to petition for enforcement in No. 8906	1950	1931
Decree, Case No. 8906	1953	1933
Clerk's certificate (omitted in printing)	1954	1934
Order extending time to file petition for writ of certiorari, Case No. 874	1955	1934
Orders allowing certiorari	1956	1935

737-180—64——1

1887 [File endorsement omitted]

In the United States Court of Appeals for the Fourth Circuit

No. 8790

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petition To Review and Set Aside Order of the National Labor Relations Board—Filed October 18, 1962

To The Honorable, The JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT:

Darlington Manufacturing Company and Deering Milliken, Inc. (hereinafter collectively referred to as "Petitioners") petition this Honorable Court to review and set aside a final Order, dated October 18, 1962, (hereinafter "the Order"), made and entered by respondent National Labor Relations Board in a proceeding entitled "In the Matter of Darlington Manufacturing Company, Roger Milliken, Deering, Milliken & Co., Inc. and Textile Workers Union of America, AFL–CIO, Case No. 11–CA–1071," by which Petitioners are aggrieved and their interests are adversely affected.

1888 In support thereof, Petitioners respectfully show to the Court as follows:

I

JURISDICTION AND VENUE

1. This petition is filed pursuant to section 10(f) of the National Labor Relations Act, as amended (hereinafter "the Act"), 29 USC § 160(f), and in accordance with Rule 27 of the Rules of this Court.

2. As hereinafter appears, the unfair Labor practice or practices in which Petitioners have been found by respondent National Labor Relations Board (hereinafter "the Board") to have engaged, by the terms of the Order, occurred in or about the plant and place of business of Petitioner Darlington Manufacturing Company, at Darlington, South Carolina, located in this judicial circuit.

3. Both Petitioners transact business within this judicial circuit.

II

Nature of the Proceedings as to Which Review Is Sought

4. The proceedings resulting in the Order were initiated on October 16, 1956, by the filing of charges against Petitioner Darlington Manufacturing Company by Textile Workers Union of America (hereinafter "the Union"). On December 4, 1956, respondent's Regional Director for the Eleventh Region issued a complaint charging that Petitioner Darlington Manufacturing Company had violated subsections (1), (3) and (5) of section 8(a) of the National Labor Relations Act, as amended.

1889 5. Petitioner Darlington Manufacturing Company, a South Carolina corporation, was formerly engaged in the business of manufacturing cotton textiles at its mill located in Darlington, South Carolina. Following a representation election among the employees of Darlington pursuant to an order of the Board, in which a narrow majority of the employees voting designated the Textile Workers Union of America as their collective bargaining representative, the stockholders of Darlington Manufacturing Company, on October 17, 1956, voted to dissolve the corporation, and thereafter the company ceased all business activity, sold all of its property and assets, and commenced distribution of its net assets to its stockholders.

6. Hearings on the original charge were held before Lloyd Buchanan, Esq., a Trial Examiner of the Board, in January and February of 1957, after which the Trial Examiner issued an Intermediate Report on April 30, 1957, in which he:

(a) Found that Darlington had violated certain provisions of the Act, but

(b) Rejected the demand of General Counsel for the Board that back pay be awarded to former employees of Darlington, and the demand of the Union, the charging party, that Darlington be required to resume operations as a textile mill.

7. The proceedings subsequent to the Intermediate Report of April 30, 1957 (the first of four such Reports which have been issued in the case by the same Trial Examiner) are set forth in the opinion of this Court, dated October 13, 1961, in a case entitled "Deering Milliken, Inc. v. Reed Johnston, as Regional Director of the National Labor Re-

1890 lations Board", such decision being reported at 295 F. 2d

856, and reference is hereby made to such decision for a recital in summary form of the proceedings before the Board including the Order of the Board dated April 15, 1961, which remanded Case No. 11–CA–1071 to its Regional Director for the purpose of arranging further hearings.

8. Pursuant to the mandate of this Court, and the order of the United States District Court for the Middle District of North Carolina (Wyche, D.J., sitting by designation) dated January 18, 1962, a brief hearing was held in Case No. 11–CA–1071 on February 5, 1962, in Winston-Salem, North Carolina, limited to the issue fixed by this Court in its mandate. On March 23, 1962, the Trial Examiner issued his Second Supplemental Intermediate Report and Recommended Order (the fourth Intermediate Report issued by him) in this case, in which he reiterated earlier findings that no basis existed in this record for a determination of liability under the Act on the part of any company other than Darlington Manufacturing Company, and again recommended the dismissal of the complaint against Deering, Milliken & Co., Inc.

9. On March 23, 1962, the case was once again ordered transferred to the Board in Washington, D.C., where it remained ters as accounting procedures, vacation plans, and incentive pending until the issuance of the Order sought to be reviewed by the instant proceeding.

III

Ground on Which Relief Is Sought

10. The Order adopts in part, but in large measure rejects, the findings and recommendations of Trial Examiner Lloyd Buchanan in three of his Intermediate Reports filed during the course of this case. (The Intermediate Report
*1891 not affected by the Order was concerned with the amended complaint issued against Roger Milliken in Case No. 11–CA–1071, and recommended dismissal of such complaint, a recommendation thereafter adopted by the Board.) In pertinent part, the Order determines and provides that:

(a) Deering, Milliken & Co., Inc., respondent in Case No. 11–CA–1071 (the predecessor of Petitioner Deering Milliken, Inc.), so dominated and controlled the operations and policies, especially the labor relations policies, of Petitioner Darlington Manufacturing Company (and certain other related corpora-

tions), as to constitute a "single employer" with Petitioner Darlington Manufacturing Company;

(b) The termination of the business activities of Petitioner Darlington Manufacturing Company and its dissolution by vote of its stockholders constituted an unfair labor practice on the part of such company under various provisions of the Act;

(c) Affirmative relief, including an award of back pay to former employees of Darlington Manufacturing Company, and a direction that they be offered employment at the textile mills of other corporations not parties to this proceeding, was found to be available and was granted against both Petitioners.

11. The grounds upon which Petitioners rely for the relief hereinafter requested are as follows, *inter alia*:

(a) Certain material findings of fact upon which the Board has predicated the Order are erroneous because they are contrary to the evidence in the record considered as a whole
1892 and are not supported by substantial evidence in the record considered as a whole. Specifically, but without limitation, the Board's decision is in error in holding that:

(1) The decision of the directors and stockholders of Darlington Manufacturing Company to dissolve the corporation was made without economic justification, and was solely in response to the Union's victory in the representation election;

(2) Deering, Milliken & Co., Inc. controlled and participated in the operations of Darlington Manufacturing Company, and in the formulation and execution of its policies particularly those with respect to labor relations.

(b) The conclusions of law upon which the Order is based are either unsupported by findings of fact or predicated upon erroneous findings of fact not supported by susbstantial evidence. Specifically, but without limitation, the Board has erred in its conclusions of law that:

(1) Deering, Milliken & Co., Inc. occupied "single employer" status with Darlington Manufacturing Company;

(2) Darlington Manufacturing Company did not have the right to go out of business and terminate the services of its

employees without liability under the provisions of the Act;

(3) The relief granted, including the award of back pay and an offer of employment at other textile mills, is remedial, and lies within the powers granted to the Board by the Act.

1893 12. The Order is illegal and void in its entirety, and is contrary to law and an abuse of the discretion of the Board under the Act, and respondent Board has erred:

(a) in its failing to recognize, approve and grant Petitioners' exceptions to the first Intermediate Report and recommended Order of the Trial Examiner; and,

(b) in its granting of certain of the exceptions of the Union and of the General Counsel for the Board to the other Intermediate Reports and recommended Orders in the proceeding,

copies of all of which will be part of the record to be filed herein.

IV

Relief

13. Petitioners pray that:

(a) The Board's Decision and Order be reviewed by this Court, and said Order be set aside, vacated and annulled in its entirety, and the Board be ordered to dismiss the complaint against Darlington Manufacturing Company and Deering, Milliken & Co., Inc., predecessor of Petitioner Deering Milliken, Inc.,

(b) If the preceding prayer for relief is denied, then, in that event, that this Court modify said Decision and Order of the Board, by setting aside, vacating and annulling those provisions which are erroneous and unlawful;

1894 (c) A copy hereof be forthwith served according to law upon the Board and that the Board be required in conformity with law to certify to this Court a transcript of the record in the proceedings wherein said Order was entered;

(d) This Court specifically order that the filing of this Petition shall operate as a stay of the Order of the Board;

(e) This Court exercise its jurisdiction and grant to Petitioners such other and further relief in the premises as the rights

and equities of the cause may require and may seem just and proper to this Court.

Dated: October 18, 1962.

(S) AUBREY R. BOWLES, Jr.,
(S) AUBREY R. BOWLES, III,

Bowles, Boyd & Herod, 901 Mutual Building, Richmond 19, Virginia, Attorneys for Petitioners.

Of Counsel:

PRICE & POAG,
Lawyers Building, Greenville, South Carolina, Attorneys for Petitioner, Darlington Manufacturing Company.

TOWNLEY, UPDIKE, CARTER & RODGERS,
220 East 42nd Street, New York 17, New York, Attorneys for Petitioner, Deering, Milliken, Inc.

1895 In the United States Court of Appeals for the Fourth Circuit

No. 8790

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., PETITIONERS

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Order Allowing Intervention of Textile Workers Union, etc.—January 23, 1963

Upon the motion of Textile Workers Union of America, AFL–CIO, and no opposition appearing thereto,

It is ordered that leave be granted to the Textile Workers Union of America, AFL–CIO to intervene as a party in the above-entitled case.

January 23, 1963.

SIMON E. SOBELOFF,
Chief Judge, Fourth Circuit.

1896 [File endorsement omitted]

In the United States Court of Appeals for the Fourth Circuit

No. 8790

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Answer of the National Labor Relations Board to Petition for Review of its Order and Cross-Petition for Enforcement of Said Order—Filed January 25, 1963

To the Honorable, the JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, *et seq.*, as amended by 73 Stat. 519), files this Answer to the Petition for Review filed in this proceeding:

1. The Board admits the allegations in Part I of the Petition for Review concerning the jurisdiction of the Court.

2. With respect to the allegations contained in paragraphs numbered 4 through 10 of the Petition for Review, the Board prays reference to the certified transcript of record for a full and exact statement of the proceedings before the Board, of the pleadings and evidence, of the Board's findings of fact, conclusions of law, and order, and of all other proceedings had in this matter.

3. The Board denies each and every allegation of error contained in the Petition for Review.

4. Further answering, the Board avers that the proceedings before it, and the findings of fact, conclusions of law, and order of the Board were and are in all respects proper under the Act, and pursuant to Section 10(e) of the Act, respectfully petitions this Court to enforce this order.

1897 5. Pursuant to section 10 (e) and (f) of the Act and Rule 27(7) of this Court, the Board will file with this Court a certified list of all documents, transcripts of testimony, exhibits, and other material comprising the entire record of the proceedings before the Board.

WHEREFORE, the Board prays that the Court deny the Petition for Review and enter a decree enforcing the Board's order in full.

(S) MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

Dated at Washington, D.C., this day of Jan. 23, 1963.

1898 United States Court of Appeals for the Fourth Circuit

No. 8790

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., PETITIONERS

versus

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, INTERVENOR

ON PETITION TO REVIEW AND SET ASIDE ORDER OF THE NATIONAL LABOR RELATIONS BOARD

No. 8861

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, PETITIONER

versus

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

1899 DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., INTERVENORS

ON PETITION TO REVIEW AND MODIFY A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

No. 8906

NATIONAL LABOR RELATIONS BOARD, PETITIONER

versus

DEERING MILLIKEN AND COMPANY, INC., RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Argued June 13, 1963.

Before SOBELOFF, Chief Judge, and HAYNSWORTH, BOREMAN, BRYAN, and BELL, Circuit Judges, sitting en banc.

Thornton H. Brooks (McLenon, Brim, Holderness & Brooks on brief) for Darlington Manufacturing Company; *Stuart N.*

Updike and John R. Schoemer, Jr., (*Townley, Updike, Carter & Rodgers on brief*) for Deering Milliken, Inc., and Deering, Milliken and Company, Inc.; *Nancy M. Sherman, Attorney, National Labor Relations Board, Arnold Ordman, General Counsel;* (*Dominick L. Manoli, Associate General Counsel; Marcel Mallet-Prevost, Assistant General Counsel, and James C. Paras, Attorney, National Labor Relations Board, on brief*) for National Relations Board, and *Benjamin Wyle* (*Patricia Eames on brief*) for Textile Workers Union of America, AFL–CIO.

Opinion—November 15, 1963

ALBERT V. BRYAN, *Circuit Judge:*

The National Labor Relations Board in these consolidated cases has made these pivotal decisions:[1]

1. Darlington Manufacturing Company committed an unfair labor practice under the National Labor Relations Act, Section 8(a)(3)[2]—forbidding discrimination in regard to tenure of employment—by closing and liquidating its only plant, and discharging its employees, in 1956 because of the election of Textile Workers Union of America, AFL–CIO as bargaining representative for the employees;

2. Darlington must pay all of such discharged employees their wages, less current net earnings, "until the discharged employees are able to obtain substantially equivalent employment" or until they are put on a preferential hiring list by Deering Milliken, Inc.; and

1901 3. Deering Milliken, Inc. and its affiliates are liable for the payment of these wages on the ground that Darlington, with others, was such an affiliate of Milliken and together they constituted a single employer.

In petition No. 8790 Darlington and Milliken seek to vacate these Board orders. In No. 8861 the Union, which was the charging party before the Board, prays that the orders be enlarged to require also the reopening of the Darlington plant with reinstatement of the employees, and that Roger Milliken, president of both Darlington and Milliken, notwithstanding the contrary decision of the Board, be held personally liable to satisfy the orders. In No. 8906 the Board seeks enforcement against Milliken of the Darlington liabilities.

[1] 139 NLRB No. 23, decided October 18, 1962.

[2] 29 U.S.C. § 158(a)(3)

As these actions have common issues they have been argued and considered together. We decline to enforce these orders of the Board against Darlington and Milliken.

Darlington, chartered under the laws of South Carolina, operated a print cloth mill there, manufacturing and selling cotton greige goods. It had no other plant. In 1937 Darlington went through a Section 77B bankruptcy proceeding, 11 U.S.C. § 207 (1937 ed.). Milliken, then known as Deering Milliken & Co., Inc., as one of the largest creditors, received in payment of its debt about 41% of Darlington's common stock. When Darlington was liquidated in 1956, as previously mentioned, there were outstanding 150,000 shares of common stock owned as follows:

Deering Milliken & Co., Inc.	41.4%
Cotwool Manufacturing Corp.	18.3
Roger Milliken and members of his immediate family	6.4
1902 Directors and employees of Deering Milliken & Co.	2.9
Outsiders or non-Milliken family or interests (about 100 stockholders living in South Carolina, 50 in New York, and more than 50 scattered over the United States)	31.0
	100.0%

In March 1956 the Union commenced a campaign to organize the Darlington employees and to become their bargaining representative. An election conducted under the direction of the Board was called for September 6, 1956. The Union won, 258 to 252.

On September 12 Darlington filed objection to the election. A conference was requested on the same day by the Union to discuss a collective bargaining agreement. The request was refused by Darlington on the ground the election protest had not been decided and the Union had not been certified.

Also on September 12, the Board of Directors met, with all of them present. Following a brief discussion of the business status of Darlington, they resolved to recommend to the stockholders the liquidation and dissolution of the corporation. A meeting of the stockholders to act upon the resolution was called for October 17. Employees of Darlington were at once told of the recommendation. While no new ones were accepted, the plant continued to fill the orders then in hand. The objection of Darlington to the election was overruled on October 8, and the Union shortly certified as the bargaining representative.

1903 With the stockholders on October 17 adopting the recommendation of the Board of Directors by a vote of 134,911 and shares 3,774, the officers proceeded with the liquidation. Discharge of employees occurred over a span of about six weeks: from 510 employees on October 13, the payroll dropped to 460 on October 20, to 345 on October 27 and to none when the plant closed on November 24. The machinery and equipment were sold at auction on December 12 and 13, 1956. Since that time Darlington has not operated any plant in South Carolina or elsewhere[3].

Deering Milliken & Co., Inc.'s capital stock was owned in a majority amount by the members of the Milliken family. In addition they were the major (but by no means the only) shareholders in Darlington and in certain other textile corporations. The latter are the corporations referred to by the Board and in this opinion—somewhat imprecisely—as "affiliated corporations" of Milliken. Prior to 1960 Deering Milliken & Co., Inc. was not a manufactory. It was the exclusive sales representative of the producing corporations controlled by the Milliken family.

In June 1960 Deering Milliken & Co., Inc. was merged into the Cotwool Manufacturing Corporation, and the latter's name then changed to Deering Milliken, Inc., herein known as Milliken. A majority of its stock was owned by the Milliken family. After the merger Milliken carried on the textile manufacturing formerly pursued by Cotwool.

1904 The finding of the Board—that the decision to close the mill was an unfair labor practice under § 8(a)(3)—was spelled out in this way:

> "Darlington discriminated in regard to its employees' tenure of employment by closing its plant—thereby discharged the employees—and, because the plant closing was the direct result of the employees' selection of the Charging Union as their collective bargaining representative, Darlington's retaliation against the employees for their activities in behalf of the Union discouraged the employees' continued membership in the Union."

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[3] A concise history of the proceedings in this case appears in Judge Haynsworth's opinion for this Court in Deering Milliken, Inc. v. Johnston, 295 F 2d 856 (1961).

Abridged and as pertinent here the terms of § 8(a)(3) are these:

> "It shall be an unfair labor practice for an employer—by discrimination in regard to hire or tenure of employment or any term or condition if employment to encourage or discourage membership in any labor organization."

In this determination the Board acknowledged, as the Trial Examiner had found, that there were economic considerations sufficient in themselves to support the decision by Darlington to terminate operations. However, both the Examiner and the Board concluded that "the decision to close the mill was not a fact based on economic factors, and that, but for the Union's election victory, that decision would not then have been made."

Upon this premise the Board declared all the closure discharges to be unlawful, justifying the usual remedy of
1905 reinstatement and reimbursement for loss of pay. But with the shutdown complete and permanent reinstatement not achievable, the relief was necessarily directed primarily to restitution of wages. The monetary redress was awarded by the Board as follows:

> "[W]e shall therefore order the Respondent, Darlington, to provide back pay *until the discharged employees are able to obtain substantially equivalent employment*". [Accent added.]

Further, the Board overruling the Trial Examiner found that "Darlington occupied a single employer status with Deering Milliken and its affiliated corporations". On this basis Milliken and its affiliates were declared "liable for back pay to the same extent as we have heretofore directed with respect to Darlington" and were ordered to place the discharged employees on a preferred hiring list. Additionally, Milliken was commanded to offer employment to these discharged workers in its other mills in South Carolina or nearby States, without prejudice to their seniority and other privileges.

All of these orders were qualified by the proviso that if no work was available at the Milliken mills, then the accumulation of back pay would be tolled as and when the dischargees were put upon Milliken's preferential hiring list.

I. Our opinion is that the decision to close the plant was not an unfair labor practice. In this we accept the findings

of fact made by the Board. While, as just observed, the evidence discloses substantial economic reasons warranting the determination to close the plant without reference to the entry of the Union into the plant, we accede arguendo to the contention of the Board that these reasons were not acted upon. Even if they were, however, we shall assume, again arguendo, with the Board that if unionization also played a part in the resolve to close the plant, then the contribution of this factor may be considered as responsible for the cessation.

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To go out of business in toto, or to discontinue it in part, permanently at any time, we think was Darlington's absolute prerogative. The fundamental purpose of the National Labor Relations Act is to preserve and protect the rights of both industry and labor so long as they are in the relationship of employer and employee. But the statute's scope does not exceed that province. It does not compel a person to become or remain an employee. It does not compel one to become or remain an employer. Either may withdraw from that status with immunity, so long as the obligations of any employment contract have been met. Such withdrawal, alone and of itself does not create any obligation of either the employer or the employee to the other under the Act. *Cf.* Dissenting opinion of Board Member Rodgers in the present case. If a cessation of business is adopted to avoid labor relations, the proprietor pays the price of it: permanent dissolution of his business, in whole or in part. A statute authorizing an order forcing the continued pursuit of operations in these circumstances would be of doubtful validity. Consider the consequences of an attempt to punish as contempt a violation of such an order, and its fatal infirmity is revealed: the proprietor would be jailed or otherwise penalized for not reopening a demised business reinstating employees.

Of course, the right of discontinuance which we here uphold, means an actual, unfeigned and permanent end of operations—not a removal, nor subcontract, nor a change merely in the form of the corporate entity. No ruse or subterfuge is suggested here. Darlington's was an absolute desistence, not a temporary intermission as apparently was contemplated in NLRB v. Norma Mining Corp., 206 F. 2d 38 (4 Cir. 1953). There was no provisional lockout, the mill was not transplanted elsewhere, and its sale was concededly entire,

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bona fide and irrevocable. The Trial Examiner demonstrated beyond debate that Darlington was not a "run-away" plant—that is, a plant having another existence in another form—finding that Darlington was not hidden among the other Milliken corporations. No disagreement with this finding was, or on substantial evidence could have been, expressed by the Board.

"There is no decided case", the Board candidly states, "directly dispositive of Darlington's claim that it had an absolute right to close its mill, irrespective of motive". While a number of the decisions on the point mention the presence of a legitimate economic reason in connection with the right to close, an analysis of them discloses that they do not declare the existence of such a reason to be indispensable to the validity of the closing. See, *e.g.*, NLRB v. Preston Feed Corp., 309 F. 2d 346, 352 (4 Cir. 1962); NLRB v. New England Web, Inc., 309 F. 2d 696, 700 (1 Cir. 1962); NLRB v. Rapid Bindery, Inc., 293 F. 2d 170, 175 (2 Cir. 1961); Union Drawn Steel Co. v. NLRB, 109 F. 2d 587, 592 (3 Cir. 1940). Nor are they precedents for the proposition that an owner or operator cannot go out of business at his option if the closure is intended to be, and is in truth, absolute and permanent. These authorities, we think, support the view that if the termination is without intent to resume the business elsewhere—as a runaway—the power to close, even if spurred by unionization, is not precluded by the Act.

1908 The right is implicitly recognized in Southport Petroleum Co. v. NLRB, 315 U.S. 100, 106 (1942), with Justice Jackson saying, "Whether there was a *bona fide* discontinuance and a true change of ownership—*which would terminate the duty of reinstatement*" was a question of fact determinable by the Board or the Court on contempt proceedings. [Accent added.] Bona fides does not mean exclusively an economic ground, but as well that the termination was, as here, not merely a gesture but an actuality.

Lower courts have long given explicit sanction to the right of discontinuance. Over 20 years ago the Fifth Circuit said in NLRB v. Tupelo Garment Co., 122 F. 2d 603, 606 (5 Cir. 1941):

> "The stockholders of Tupelo Garment Co. [the employer] had the absolute right to dissolve their corporation and the Board was without authority to prevent this."

Recently, the Sixth Circuit put it this way in NLRB v. R. C. Mahon Co., 269 F. 2d 44, 47 (6 Cir. 1959):

> "We find nothing in the National Labor Relations Act which forbids a company, in line with its plans for operation, to eliminate some some division of its work. As held in National Labor Relations Board v. Adkins Transfer Company, Inc., supra, [226 F. 2d 324] an employer faced with the practical choice, either of paying enhanced wage rates demanded by a union or of discontinuing a department of its business, is entitled to discontinue."

1909 Other courts have spoken in like manner and as emphatically, *e.g.*, NLRB v. New England Web, Inc., *supra*, 309 F. 2d 696, 700; Jays Foods, Inc. v. NLRB, 292 F. 2d 317, 320 (7 Cir. 1961); NLRB v. New Madrid Mfg. Co., 215 F. 2d 908, 914 (8 Cir. 1954); NLRB v. Caroline Mills, Inc., 167 F. 2d 212, 214 (5 Cir. 1948); Atlas Underwear Co. v. NLRB, 116 F. 2d 1020, 1023 (6 Cir. 1941).

To be sure, there are decisions adjudging the employer liable even upon an absolute disposition of all or a part of the business equipment: NLRB v. Kelly & Picerne, Inc., 298 F. 2d 895 (1 Cir. 1962); NLRB v. Missouri Transit Co., 250 F. 2d 261 (8 Cir. 1957); NLRB v. Bank of America, 130 F. 2d 624 (9 Cir.), *cert. denied*, 318 U.S. 791 (1942). Upon examination, however, it will be observed that these cases did not involve the extinguishment altogether of the business and the end of further participation by the employer in his former sphere. The predominant element of the principle we maintain is that the business is no longer extant and the owner has forfeited the penalty for withdrawing, that is, he has foregone the privilege of further pursuit of his business.

II. The doctrine of single employer, heretofore noted, was used by the Board to project Darlington's liability, as determined by the Board, upon Milliken. See NLRB v. Gibraltar Industries, Inc., 307 F. 2d 428, 431 (4 Cir. 1962), *cert. denied*, 372 U.S. 911 (1963); NLRB v. Deena Artware, Inc., 361 U.S. 398 (1960). Our decision that Darlington is without liability, of course, bars such expansion of responsibility. Furthermore, even if Darlington was a division of Milliken, the transfer of Darlington's liability to Milliken upon the single employer principle is precluded because, as we have stated, a part,

1910 like the whole, of a business may be abolished when the extinction is consummated in circumstances like the present.

III. In its petition the Union asked us to enlarge the Board's order to include Roger Milliken individually in the orders of restoration of wages entered by the Board. This prayer like the further prayer of the Union that Darlington be required to reopen its plant is, obviously, denied by our acquittal of Darlington of liability.

The Board sustained the Trial Examiner in finding that Darlington had violated § 8(a)(1) in pre- and post-election statements and urging a repudiation of the Union. Likewise § 8(a)(5)—wherein refusal to bargain is made an unfair practice—was found contravened by Darlington. Remedies for these offenses are not now available as Darlington is no longer alive.

Power to command an employer to stay in business indefinitely, or assess him with damages for permanently going out of business, is not a National Labor Relations Board prerogative. Assumed by the Board in these cases, it is denied here.

Enforcement of Orders Denied.

1911 J. SPENCER BELL, Circuit Judge, with whom SOBELOFF, Chief Judge, concurs, dissenting:

If I read the majority opinion correctly it stands for the proposition that an employer may cease business in whole or in part for any reason, including anti-union bias, so long as such cessation is actual, unfeigned and permanent. It also holds that having ceased business and thereby terminated the employer-employee relationship, an employer may not be held liable under the National Labor Relations Act for any violations committed prior to his cessation of business. Since, in the opinion of the majority, an employer may cease business in part for any reason, including anti-union bias, they do not reach the question presented by the Board's finding that Deering Milliken [1] constituted a single employer of which Darlington was a part.

[1] Throughout this opinion Deering Milliken is used to refer to the entire complex of 27 manufacturing corporations and the affiliated service corporations unless it is clear from the context that the reference is to the factoring and sales agency, Deering Milliken and Company, Inc., later merged into Cotwool Manufacturing Corp. and then called Deering Milliken, Inc.

In my opinion the question presented to this court is whether an employer commits an unfair labor practice when he closes down a part of his business in order to discourage the practice and procedure of collective bargaining and to retaliate against his employees for exercising their freedom of self organization under the National Labor Relations Act. Not only does such conduct violate the basic policies embodied in the Act; it is literally within the proscription of Section 8(a)(3). Furthermore, it has been held to be an unfair labor practice by
1912 prior decisions of this and other Circuits, and I am unable to read the cases cited by the majority in support of its opinion as holding to the contrary.

Single Employer Status

The Board found that there was a sufficient degree of common ownership and control of labor relations and operations among Darlington, Deering Milliken, and its affiliated corporations to hold that these entities were in reality a single employer under the National Labor Relations Act.

As this court held in NLRB v. Gibraltar Industries, Inc., 307 F. 2d 428, 431 (4 Cir. 1962), cert. denied, 372 U.S. 911 (1963), a Board determination that two or more economic entities constitute a single employer is entitled to judicial approval if "there is substantial evidence in the record to support the Board's conclusion and order". The court in review, moreover, may not "displace the Board's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it de novo". Universal Camera Corp. v. NLRB, 340 U.S. 474, 488 (1951). I am convinced, upon review of the record as a whole, that there was an abundance of evidence to support the Board's position that Darlington, Deering Milliken and its affiliates constituted a single employer for purposes of the Act.

The record reveals that Darlington at the time when it ceased operations was one of seventeen corporations in the Deering Milliken complex owning and operating twenty-seven manufacturing plants scattered throughout the Eastern Seaboard. Deering Milliken performed the dual function
1913 of selling goods produced by each of these manufac-

turing corporations and factoring their accounts receivable [5].

The head of Deering Milliken's Tax Department, C. W. Kable, Jr., was an officer of each of the seventeen manufacturing corporations. His Department prepared all federal and state tax returns of the manufacturing corporations and advised them on a wide variety of tax benefits to be derived through following the Department's suggestions in such matters as accounting procedures, vacation plans, and incentive compensation contracts for supervisors. The Tax Department also advised the various manufacturing corporations in the proper drafting of minutes of directors' and stockholders' meetings.

The Deering Milliken Insurance Department handled all insurance for the various plants. The manufacturing corporations purchased standard forms of insurance through the Insurance Department, with policies running to each of them. Fire insurance and workmen's compensation insurance, however, were purchased under a policy covering all the plants. Significantly, Deering Milliken paid premiums on an executive air insurance policy covering both Deering Milliken executives and key manufacturing personnel, along with executives of Deering Milliken Service Corporation and Deering Milliken Research Corporation.

The Deering Milliken Service Corporation, a wholly owned subsidiary of the seventeen manufacturing corporations, was organized in 1951 for the stated purpose of providing 1914 "essential services to organizations in the textile industry at the lowest possible cost". These services were restricted, almost exclusively, to those corporations in the Deering Milliken chain. Various departments of Deering Milliken Service purchased all machinery, equipment, and cotton for the manufacturing plants. Research was conducted in the area of product improvement and studies were regularly made in connection with production problems common to several or all of the plants. Based on its findings, Deering Milliken Service made recommendations to the various manufacturing corporations with a view toward obtaining maximum

[5] Each mill corporation was charged a fee for services rendered. The service charges made were substantially less than those which would have been made by independent selling and factoring agents. Also of importance is the fact that Deering Milliken had no other non-Milliken affiliated mills as clients.

efficiency from raw materials, equipment, and personnel. These recommendations directly affected the work loads and work speeds in the manufacturing plants, a critical area of labor relations.

The Placement Department of Deering Milliken Service conducted an annual recruitment program among college students, seeking to attract supervisory personnel for each of the manufacturing corporations. The prospective management and technical trainees were encouraged to look upon the organization as a whole. The record reveals that after hiring there was considerable movement of supervisory personnel between corporations. For instance, approximately half of the supervisors who worked at Darlington between 1951 and 1956 were hired from other Deering Milliken corporations, as was Darlington's Mill Treasurer, James M. Oeland.

Supplementing the services carried on by Deering Milliken Service, Deering Milliken Research Corporation conducted surveys and inspections in the manufacturing plants toward the goal of standardizing a preventative maintenance system common to all of the mills.

1915 The record, in sum, reveals that the Deering Milliken complex was a thoroughly integrated, monolithic enterprise. The participating mills were able to call upon various service arms of the enterprise to effect optimum employment of men, material, and machinery. Sales were made and factored through a common agency. Management personnel was jointly recruited and transfers freely made from one corporation to another. Moreover, descriptive literature and advertising published by Deering Milliken on behalf of the manufacturing corporations repeatedly emphasized the generic brand name of Milliken rather than individual corporate brand names.

After the alleged unfair labor practices which formed the subject matter of the present controversy, Deering Milliken & Co., Inc., in 1960 merged into the Cotwool Manufacturing Corp. to form Deering Milliken, Inc., and several of Cotwool's former subsidiaries were then liquidated into Deering Milliken, Inc. I find the merger of more than passing interest. To me it indicates that the separate corporate entities of the Deering Milliken complex were largely paper corporations which could be shifted and changed at the convenience of the Milliken family. This is highlighted by the fact that the various liqui-

dations and mergers had no substantial effect on the actual functioning of the various entities within the Deering Milliken enterprise. Minot Milliken, Vice President of Deering Milliken, Inc., himself testified that nothing "of substance" was changed as a result of the merger. I think the ease with which this corporate change was made in 1960 strongly indicates that the Deering Milliken complex in 1956 at the time of Darlington's dissolution was a single employer in which "corporate forms [were] largely paper arrangements that [did] not reflect the business realities." NLRB v. Deena Artware, Inc., 361 U.S. 398, 403 (1960). The critical question becomes, therefore, did the Board have substantial evidence upon which to base its conclusion that there was a degree of common control and ownership existing in this unified industrial complex to warrant finding a single employer?

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As pointed out in the majority opinion, Deering Milliken's capital stock was owned in majority amount by the members of the Milliken family. In addition they owned controlling stock in Darlington and in all of the other manufacturing corporations. These mill corporations, in turn, owned all the shares of Deering Milliken Service Corporation, and, along with Deering Milliken & Co., Inc., all the shares in Deering Milliken Research Corporation. The stock ownership was used by the Milliken family to place members of the Milliken family in the position of corporate officers and board directors of the various corporations. Roger Milliken was President of Deering Milliken and President also of all the manufacturing corporations except Laurens (where he was Vice President and on the Board of Directors). A majority of the directors of all the manufacturing corporations except one (Hartsville) were members of the Milliken family. Deering Milliken doesn't seriously deny that the Milliken family's stock ownership permitted the family, and more specifically Roger Milliken, to exercise dominion and control over all phases of business and labor relations at each mill and over each and every corporate entity in the entire complex, but rather, it strongly denies that such control was actually exercised.

The Board found that through majority stock ownership and interlocking directories, the Milliken family (especially in the person of Roger Milliken) was able to and did exercise actual control in the area of labor relations. As stated by the Board:

1917 "Roger Milliken, the president of all of the corporations save one, exercised ultimate control over the labor relations of all of the corporations. Thus he received reports from each of the mills as to progress in reducing the number of jobs, the pay raises given, hours worked and job assignments, was asked for approval of various personnel actions, and made suggestions as to the hiring of personnel. More important, however, was Roger Milliken's participation in the area having the greatest impact on labor relations—the area of collective bargaining. Thus he circulated a memorandum and editorial which was obviously intended as a primer for the managers of the mills in combating union organization. During the organizational campaign his pervasive influence was demonstrated by the statements of supervisory employees that Roger Milliken would close the plant rather than permit its unionization."

The Board does not suggest that Roger Milliken actually engaged in the day to day direction of labor relations at each of the plants. The day to day details inevitably had to be left to the resident chief executive officers, the Mill Treasurers. Everything other than over-all direction and guidance as to company policy of labor relations would, of necessity, have to be exercised by subordinates. Indeed it seems remarkable that Roger Milliken had the time, in view of his far flung interests and responsibilities, to keep informed about labor relations in the individual mills and to make the detailed suggestions as to many facets of labor relations that the record reveals he did. The record is replete with suggestions and recommendations by Roger Milliken to the Mill Treasurers on ways to

1918 improve production and reduce jobs. For instance, Roger Milliken on different occasions proposed that each piece of machinery be tagged with its cost to discourage misuse, that closed circuit television be utilized to eliminate certain jobs, that machinery be rearranged to reduce the operator's walking distance, that the time which employees spent smoking be limited, and that beverage dispensing machines for employee use be installed. These suggestions were usually made in reference to "our" mills. These and other suggestions were not always followed, but they unmistakably indicate that Roger Milliken kept himself constantly informed as to what was occurring and didn't hesitate to suggest improvements.

Proof of Roger Milliken's ultimate and uncontradicted control over major policies affecting labor relations illustrated by his decision, with approval of his family, to close the Darlington plant because of the employees' decision to be represented by a union.

After the union had won the Board supervised election of September 6, 1956, Darlington Mill Treasurer Oeland and Darlington attorney Poag telephoned Roger Milliken to advise him of the union's victory. One day later, Roger Milliken decided to close down the mill. Roger Milliken informed three members of his family, who were on the Darlington Board of Directors, of his intention to close the mill, he did not inform Mill Treasurer Oeland. On September 12, the Board met and unanimously passed a resolution to close the mill. This resolution to close the mill. This resolution was acted upon at a shareholders' meeting of October 17 and passed by a large majority, with only a few shareholders who were residents of the Town of Darlington voting against liquidation. Immediately after the shareholders' meeting, Roger Milliken
1919 was informed by South Carolina State Senator Mozingo, a resident of the Town of Darlington, that 83% of the mill employees had signed a petition to go back to work. Roger Milliken's reply was: "As long as there are 17% of the hard core crowd here, I refuse to run the mill".

Thus I find in the record overwhelming evidence to support the Board's holding:

> "[W]e conclude that Deering Milliken, primarily through the person of Roger Milliken, exercised control over the labor relations of all the corporations, including Darlington. Although the details of day-to-day personnel relations may have been, of necessity, conducted at the mills, it is manifest that the major decisions were exclusively in the hands of Roger Milliken. Under such circumstances it is clear that Deering-Milliken must assume responsibility for control of Darlington's labor relations."

Deering Milliken's brief contends that the Board had no basis to find that Roger Milliken was not acting solely in his capacity as President of Darlington Mills. The evidence, however, points to the fact that Roger Milliken retained ultimate control over the whole Milliken complex and acted as its chief executive officer, without delineating his various ca-

pacities. The Darlington Mill was but a small unit in a vast industrial empire employing more than 19,000 persons owned and controlled directly or indirectly by the Milliken family. Its closure was intended to be and was a grim deterrent to the thousands of employees in the affiliated plants who might entertain similar notions of unionization. Such con-
1920 duct was properly considered by the Board to fasten responsibilities of his actions for unfair labor practices upon the entire complex.

Closing Mill Unfair Labor Practice

Having found that the Board had ample evidence to conclude that the Milliken complex was a single employer under the NLRA, the next question to consider is whether under the decided cases, the act of Deering Milliken in shutting down the Darlington plant was an unfair labor practice, cognizable under Section 8(a)(3).

That the plant closure was the direct result of the organizational activities of the employees is too well documented by the record to require extended discussion. Roger Milliken himself gave that reason to his stockholders for his decision to close the mill. On approximately thirty separate occasions, supervisory personnel threatened the employees with closure in case the union won, and attributed their prophesies to Roger Milliken's well publicized hostility to unions. Milliken himself circulated to all of his mills a trade magazine article pointing out that his attitude was so well known that liquidation was inevitable from the minute the election result was announced. Darlington's belated efforts to stress the economic factors are belied by the prior history of the mill. In the nine months prior to the election, management had spent $400,000.00 in a modernization program which included not only new machinery but additions to plant structure. A belief that union wage demands and bargaining attitudes towards work loads may make future operations unprofitable does not constitute an economic reason which would excuse the respondent's conduct in this case. The Board found upon
1921 abundant evidence that the respondent's conduct was discriminatorily motivated.

"Conduct which on its face appears to serve legitimate business ends in these cases is wholly impeached by the showing of an intent to encroach on protected rights.

> The employer's claim of legitimacy is thereby totally dispelled [Citing cases].
>
> "* * * 'The ultimate problem is the balancing of conflicting legitimate interests. The function of striking that balance to effectuate national labor policy is often a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board, subject to limited judicial review. Labor Board v. Truck Drivers Union, 353 U.S. 87, 96'." National Labor Relations Board v. Erie Resistor Corporation, et al. 31 U.S.L.W. 4407, 4409, 4411 (U.S. May 13, 1963).

This court has held, in unison with other Circuits, that an employer may neither temporarily shut down operations to avoid bargaining with a union, *NLRB* v. *Norma Mining Corp.*, 206 F. 2d 38 (4 Cir. 1953), nor may he subcontract out work to another employer formerly done by a division in his business for that purpose, *NLRB* v. *Preston Feed Corp.*, 309 F. 2d 346 (4 Cir. 1962). Moreover, other Courts of Appeals have held that an employer may not transfer work to another plant owned, directly or indirectly by the employer himself, to avoid bargaining. See e.g., *NLRB* v. *United States Air Conditioning Corp.*, 302 F. 2d 280 (1 Cir. 1962); *NLRB* v. *Winchester Electronics, Inc.*, 295 F. 2d 288 (2 Cir. 1961); *NLRB* v. *Lexington Electric Products Co.*, 283 F. 2d 54 (3 Cir. 1960); 1922 *cert. denied*, 365 U.S. 845 (1961); *Butler Bros. v. NLRB*, 134 F. 2d 981 (7 Cir. 1943). I fail to see any distinction in principle between such conduct and that of the Respondent here.

More to the point, I consider the decision of this court in *NLRB* v. *Preston Feed Corporation*, 309 F. 2d 346 (4 Cir. 1962) as controlling on the legal issue here. In that case the Board sought enforcement of its order requiring the employer to reinstate its trucking operations which the Board found had been closed down in order to discourage unionization among its employees. This court enforced the order, pointing out that although the employer had decided for valid economic reasons to close the operation in the future, its sudden and precipitate closure was to discourage unionization and, therefore, constituted an unfair labor practice which could be remedied by requiring reopening until the employer could vindicate its closing for economic reasons. Judge Soper, speak-

ing for a unanimous court, recognized the employer's right to close for valid economic reasons:

> "The question has been considered in a number of cases in which the Board, in order to effectuate the purposes of the Act, has thought it desirable to require an employer to continue a certain business operation or department which he desired to abandon. In these cases it has been uniformly held that the Board is without power to interfere with management *where the discontinuance of a part of the business is prompted by legitimate business motives and not in order to frustrate the purposes of the Act or interfere with employees in*
> 1923 *the exercise of rights conferred upon them by the statute.* (Citing cases) [Emphasis added.].
>
> "In the instant case, as we have seen, the initial decision of the Company to close its trucking department was based on economic reasons and not on hostility to the union, but the immediate decision and the prompt closing of the department on March 6th, when it was discovered that the employees led by the union were insisting upon their rights under the statute, was impelled by the intent to restrain the employees in their rights to collective bargaining. We shall, accordingly, enter a decree that the order of the Board in these and other particulars be enforced. * * *" 309 F. 2d 352.

It is apparent that the Board's order in this case is within the rationale of this Court's judgment in the *Preston* case. See also *NLRB* v. *Norma Mining Corp.*, 206 F. 2d 38 (4 Cir. 1953), where this court through Judge Dobie, speaking for a unanimous court, enforced the order of the Board requiring an operating lessee to reopen a mine closed by the employer in violation of Section 8(a)(1) and (3) of the Act.

Again, the Eighth Circuit in *NLRB* v. *Missouri Transit Co.*, 250 F. 2d 261 (8 Cir. 1957) faced a situation closely analogous to the one we have here. The Board's finding of an unfair labor practice and the relief granted by the Board and enforced by the court support the Board in this case. The Missouri Transit Company was a common carrier of passengers by bus for hire engaged in two operations: one a short-line intrastate shuttle bus operation between Waynesville, Missouri, and Fort Leonard Wood, Missouri; the other a long-line inter-
1924 state bus operation between Fort Leonard Wood and

Cedar Rapids, Iowa. As a result of union attempts to organize the shuttle-line bus drivers, the company sold all the equipment used in the operation of the shuttle route to a competitor. This action resulted in the discontinuance by the company of the shuttle-line route and service, and terminated the employment of all shuttle-line bus drivers. Upon the filing of an unfair labor practice against the company, the Board found that the company had disposed of the shuttle-line route and equipment used in operating it, and had discharged the shuttle-line drivers, for discriminatory reasons, in violation of Sections 8(a) (3) and (1) of the Act. In granting affirmative relief, the Board ordered that the company place the discharged drivers on a preferential hiring list for priority consideration for jobs in the long-line operations and that the company pay back wages to these individuals from the date that the shuttle-line bus operations were closed to the date when they were either reinstated or placed on a preferential hiring list.

The company contended that the Board was powerless either to order back pay beyond the time when the shuttle-line bus operation ceased or to order reinstatement in a completely separate and independent division of the company. The Eighth Circuit rejected the Company's contentions and ordered enforcement of the Board's order in full. I think the logic of the *Missouri Transit* case compelling and the application of the principles announced clearly appropriate to case here being considered.

In *NLRB* v. *Wallick*, 198 F. 2d 477 (3 Cir. 1952), that court sustained a Board order requiring a respondent partnership which operated several enterprises engaged in the manu-
1925 facture of ladies' garments to either reopen a plant which it had closed in violation of the Act because its employees had organized or give its employes an opportunity to work in other plants operated by the partnership. This was true even though the closed plant was owned by a separate corporation the stock of which was owned by the individual partners. See also *A. M. Andrews Co., of Oregon* v. *NLRB*, 236 F. 2d 44 (9 Cir. 1956).

In the present case, even absent single-stockholder status, the employees had a remedy. After the Darlington stockholders on October 17, 1956, had adopted the recommendations of the Board of Directors to liquidate the Darlington Mill, employees were discharged in separate groups over the

intervening period until the plant closed on November 24. Yet, pursuant to the laws of South Carolina, the corporation continued to exist for the purpose of liquidating its assets and settling its liabilities. If, as the Board found, amply supported by the record as a whole, these discharges were for discriminatory reasons under Section 8(a)(3), relating to the employees' "tenure of employment", then at a very minimum the amounts realized from the sale of Darlington machinery and equipment should be allocated to reimbursing the discharged employees for lost wages from the time of their discharge until the liquidation of the corporation had been completed. It is obvious that if one or two, or even a majority of employees had been discharged for their activities on behalf of the union, then the court would uphold a Board finding of an 8(a)(3) violation. It seems tortuous logic to say, therefore, that because the company discharged without distinction both the employees who voted against the union (but who were discharged nonetheless because a majority of the employ-
1926 ees elected to be represented by a union), the company is absolved from liability under the Act.

But beyond this remedy I think the Board was justified in ordering Deering Milliken to provide back pay until the discharged employees were able to obtain susbstantially equivalent employment. The record reveals that a large number of Darlington supervisory personnel was absorbed into the Deering Milliken complex. Late in September 1956, the Deering Milliken Industrial Engineering Department sought and obtained from Darlington Mill Treasurer Oeland a list of Darlington Supervisory personnel who might be "useful" to it. All of these men were interviewed by the Department. Plans were made to have all supervisory personnel of the Darlington Mill transferred to the Department's payroll for a three month period after their separation from Darlington. The purpose of this arrangement was to provide a period of time within which these men could be "picked up" by other Deering Milliken Mills. Some of these supervisors were actually picked up, going directly on the payroll of other mills without an interval on the payroll of the Department. Others were transferred to other parts of the Deering Milliken organization. Although some supervisors ceased their affiliation with Deering Milliken entirely, they were given time off, with pay, in which to seek new employment opportunities. One of

these men was Mill Treasurer Oeland, who remained on the Darlington payroll until July, 1957, some seven months after mill machinery and equipment had been sold. In addition, a few supervisors received bonus payments after the Darlington closing in appreciation of their efforts during the union crisis. Thus even though the Deering Milliken complex disclaims any responsibilities after the Darlington closing for
1927 those whom it regards as its enemies, it managed to reward and find places for those whom it regarded as its friends. I see nothing to prevent enforcing the Board's order which would also require Deering Milliken to offer substantially equivalent employment to non-supervisory personnel who were equally adversely affected by the mill's closing.

I am not unmindful of the Board's findings that Darlington committed other violations in addition to the 8(a)(3) here discussed, specifically 8(a)(1) and 8(a)(5). The repeated threats of members of management that the mill would be shut down if the union won the representation election constituted a classic form of interference, restraint, and coercion proscribed by Section 8(a)(1). Section 8(a)(1) was also violated by management threats to blacklist union adherents, their interrogation of employees regarding their union activity, and their support of a petition disavowing the union after the announced intention of Roger Milliken to close the mill upon learning of the union victory.

The Board also found that the failure of the Company to bargain with the union with respect to the tenure of employment of the employees in the Darlington Mill and to furnish the union with wage and related bargaining data constituted an unfair labor practice under Sections 8(a)(5) and (1). I am convinced that the record as a whole amply supports the Board's findings, but do not feel that an extended discussion of these violations is warranted here.

1928 In the United States Court of Appeals for the Fourth Circuit

No. 8790

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., PETITIONERS

versus

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, INTERVENOR

ON PETITION TO REVIEW AND SET ASIDE ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Decree—Filed November 19, 1963

THIS CAUSE came on to be heard upon the petition of Darlington Manufacturing Company and Deering Milliken, Inc., to review and set aside an order of the National Labor Relations Board of October 18, 1962, issued against said Darlington Manufacturing Company, Darlington, South Carolina; Deering Milliken and Company, Inc., New York, New York, and Deering Milliken Company, Incorporated, New York, New York, their officers, agents, successors, and assigns, in proceedings before said Board known upon its records as Case No. 11–CA–1292; upon the answer of said Board and cross-petition for enforcement, and upon the certified list in lieu of a transcript of the record; and said cause was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth Circuit, that the said order of the National Labor Relations Board be, and the same is hereby, set aside.

CLEMENT F. HAYNSWORTH, Jr.,
United States Circuit Judge.

HERBERT S. BOREMAN,
United States Circuit Judge.

ALBERT V. BRYAN,
United States Circuit Judge.

I dissent:

J. SPENCER BELL
United States Circuit Judge.

I concur with the dissent:

SIMON E. SOBELOFF
Chief Judge, Fourth Circuit.

[File endorsement omitted]

1929 In the United States Court of Appeals for the Fourth Circuit

No. 8790

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., PETITIONERS

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, INTERVENOR

ON PETITION TO REVIEW AND SET ASIDE ORDER OF THE NATIONAL LABOR RELATIONS BOARD

No. 8861

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., INTERVENORS

ON PETITION TO REVIEW AND MODIFY A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

No. 8906

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DEERING, MILLIKEN AND COMPANY, INC., RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Order Amending Opinion—December 9, 1963

For reasons appearing to the court,

It is ordered that the sentence inserted at the end of the paragraph ending on page 9 of the typewritten opinion reading "It is noteworthy that Darlington was the only Milliken related plant manufacturing print cloth, and since its
1930 liquidation none of the remaining mills has undertaken

the manufacture of that kind of product.", be, and it is hereby, deleted.

SIMON E. SOBELOFF,
Chief Judge, Fourth Circuit.
CLEMENT F. HAYNSWORTH, Jr.,
United States Circuit Judge.
HERBERT S. BOREMAN,
United States Circuit Judge.
ALBERT V. BRYAN,
United States Circuit Judge.
J. SPENCER BELL,
United States Circuit Judge.

[File endorsement omitted]

1931 [File endorsement omitted]

In the United States Court of Appeals for the District of Columbia Circuit

September Term, 1962

No. 17335

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Before: PRETTYMAN, Senior Circuit Judge, and WILBUR K. MILLER, Circuit Judge, and BELL, Circuit Judge of the Fourth Circuit, sitting by designation, in Chambers.

Order—December 17, 1962

On consideration of the motion of Darlington Manufacturing Company, and Deering Milliken, Inc., for leave to intervene specially and to file motion to transfer proceedings, and of said movants' motion for leave to file reply to the lodged opposition to the motion to transfer, and it appearing that no objections thereto have been filed, it is

ORDERED by the court that the aforesaid motions be granted, and that Darlington Manufacturing Company, and Deering Milliken, Inc., are hereby allowed to intervene specially in this case and to file motion to transfer, and the Clerk is hereby directed to file herein intervenors' motion to transfer proceedings.

petitioner's opposition thereto, and intervenors' reply, and upon consideration whereof, and of respondent's response to the motion to transfer, and it appearing that for "the convenience of the parties in the interest of justice" this case should be transferred to the United States Court of Appeals for the Fourth Circuit, it is

FURTHER ORDERED by the court, pursuant to Sec. 21126) of Title 28, United States Code, that this proceeding is hereby transferred to the United States Court of Appeals for the Fourth Circuit, and it is

FURTHER ORDERED by the court that the Clerk forthwith certify and transfer to the United States Court of Appeals for the Fourth Circuit all of the original papers filed by the parties in this case together with copies of the docket entries, and orders of this court entered in this case.

Dated: December 17, 1962. Per Curiam.

1932 [File endorsement omitted]

In the United States Court of Appeals for the District of Columbia Circuit

No. 17335

Appearance—Filed October 29, 1962

TEXTILE WORKERS UNION OF AMERICA

vs.

NATIONAL LABOR RELATIONS BOARD

The Clerk will enter my appearance as Counsel for the Intervener: (Name) Percy H. Russell; (Phone) ST 3-3200; (P.O. Address) 800 World Center Bldg.; (Zone) 6.

Note.—Must be signed by a member of the Bar of the United States Court of Appeals for the District of Columbia Circuit. Individual and not firm names must be signed.

1933 [File endorsement omitted]

In the United States Court of Appeals for the District of Columbia

No. 17335

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petition to Review and Modify a Decision and Order of the National Labor Relations Board—Filed October 18, 1962

Textile Workers Union of America, AFL–CIO (hereinafter also referred to as the "Union"), respectively petitions this Honorable Court to review and modify, as hereinafter set forth, a decision and order of the National Labor Relations Board entered on Oct. 18, 1962 in a proceeding entitled "Darlington Manufacturing Company, Roger Milliken, Deering, Milliken & Co., Inc. and Textile Workers Union of America, AFL–CIO, Case No. 11–CA–1071."

This petition is filed pursuant to Section 10(f) of the Labor Management Relations Act, 1947, 29 U.S.C. Section 160(f).

1934 I

THE NATURE OF THE PROCEEDINGS AS TO WHICH REVIEW IS SOUGHT

The proceeding as to which review is here sought is a proceeding under Section 10(b) of the Labor-Management Relations Act, 1947, 29 U.S.C. Section 160(b). The proceeding was initiated by charges and amended charges filed by the Textile Workers Union of America, AFL–CIO, against the Darlington Manufacturing Company, Roger Milliken, President, and Deering, Milliken & Co., Inc. (hereinafter also referred to as the "Employers").

The charges and amended charges alleged that the Employers had violated Sections 8(a) (1), (3), and (5) of the Act. Ultimately the General Counsel of the National Labor Relations Board issued complaints against the Employers which were based on the aforesaid charges.

The complaints alleged, in sum, that: the Union had conducted an organizing campaign among the Employer's work-

ers during 1956; that during the campaign the Employer's agents had conducted certain acts of coercion, surveillance and interrogation directed toward their pro-union employees; that as a result of the organizing campaign, the Union won
1935 a National Labor Relations Board representation election covering the employees at the Darlington, South Carolina plant of the Employers; within a short while after the election, the Employers shut down and liquidated the Darlington plant in order to avoid bargaining with the Union and to discriminate against the employees who had voted for the Union; and that as a result of this pattern of conduct, the Employers had violated Section 8(a) (1), (3), and (5) of the Act.

After extensive proceedings, the National Labor Relations Board issued a decision and order which the Union now brings before this Court. That decision and order, in sum, found that the Employers had generally committed the violations alleged. It also ordered them to take certain remedial action. However, the decision and order failed to order the Employers to recommence operations or to adequately reinstate its employees.

II

VENUE

The Union is a "person aggrieved" by the final order of the Board herein, and brings this petition for review in this Court under Section 10(f) of the National Labor Relations Act, 29 U.S.C. Section 160(f).

1936 III

GROUNDS FOR RELIEF

As grounds for relief herein, the Union asserts that the Board's decision and order provided an inadequate remedy for the unfair labor practices alleged and found.

IV

RELIEF REQUESTED

Petitioner prays for a review of the decision and order of the National Labor Relations Board and that:

(1) A copy of this Petition be served upon the National Labor Relations Board;

(2) This Court direct the Board to modify its decision and order in order to give more effective relief to the employees involved; and

(3) Petitioner be given such other relief as the Court may deem proper.

Respectfully submitted,

DAVID E. FELLER,
Feller, Bredhoff & Anker,
1001 Connecticut Ave., N.W.,
Washington 6, D.C.
BENJAMIN WYLE,
PATRICIA EAMES,
99 University Place,
New York 3, New York,
Attorneys for Petitioners.
By DAVID E. FELLER.

Dated: October 18, 1962

1937 [File endorsement omitted]

In the United States Court of Appeals for the Fourth Circuit

No. 8861

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., INTERVENORS

Answer of the National Labor Relations Board to Petition for Review of its Order—Filed January 25, 1963

To the Honorable, the JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151 et seq., as amended by 73 Stat. 519), files this Answer to the Petition for Review filed in this proceeding:

1. The Board admits the allegations contained in Section II of the Petition for Review.

2. With respect to the allegations contained in Section I of the Petition for Review, the Board prays reference to the certi-

fied transcript of record for a full and exact statement of the proceedings before the Board, of the pleadings and evidence, of the Board's findings of fact, conclusions of law, and order, and of all other proceedings had in this matter.

3. The Board denies each and every allegation of error contained in Section III of the Petition for Review.

4. The Board requests that the prayer for relief contained in Section IV of the Petition for Review be denied.

1938 5. Pursuant to Section 10(f) of the Act; Rule 27(7) of this Court; and an order issued by the Court of Appeals for the District of Columbia Circuit on December 17, 1962, transferring this cause (previously docketed by that Court as No. 17335) to this Court, the Board will file with this Court a certified list of all documents, transcripts of testimony, exhibits, and other material comprising the entire record of the proceedings before the Board.

WHEREFORE, the Board prays that this Court cause notice of the filing of the Answer to be served on the petitioner and that this Court enter a decree denying the Petition for Review.

(S) Marcel Mallet-Prevost
MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

Dated at Washington, D.C., this day of January 23, 1963.

1939 [File endorsement omitted]

In the United States Court of Appeals for the Fourth Circuit

No. 8861

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Amended Petition To Review and Modify a Decision and Order of the National Labor Relations Board—Filed February 5, 1963

Textile Workers Union of America, AFL-CIO (hereinafter also referred to as the "Union"), respectfully petitions this Honorable Court to review and modify, as hereinafter set forth, a decision and order of the National Labor Relations

Board entered on October 18, 1962, in a proceeding entitled "Darlington Manufacturing Company, Roger Milliken, Deering, Milliken & Co., Inc. and Textile Workers Union of America, AFL–CIO, Case No. 11–CA–1071.

This petition is filed pursuant to Section 10(f) of the Labor-Management Relations Act, 1947, 29 U.S.C. Section 160(f).

I

The Nature of the Proceedings as to Which Review Is Sought

The proceeding as to which review is here sought is a proceeding under Section 10(b) of the Labor-Management Relations Act, 1947, 29 U.S.C. Section 160(b). The proceeding was initiated by charges and amended charges filed by the Textile Workers Union of America, AFL–CIO, against the Darlington Manufacturing Company, Roger Milliken, President, and Deering, Milliken & Co., Inc. (hereinafter also referred to as the "Employer").

1940 The charges and amended charges alleged that the Employer had violated Sections 8(a) (1), (3), and (5) of the Act. Ultimately the General Counsel of the National Labor Relations Board issued complaints against the Employer which were based on the aforesaid charges.

The complaints alleged, in sum, that: the Union had conducted an organizing campaign among the Employer's workers during 1956; that during the campaign the Employer's agents had conducted certain acts of coercion, surveillance and interrogation directed toward their pro-union employees; that as a result of the organizing campaign, the Union won a National Labor Relations Board representation election covering the employees at the Darlington, South Carolina plant of the Employer; within a short while after the election, the Employer shut down and liquidated the Darlington plant in order to avoid bargaining with the Union and to discriminate against the employees who had voted for the Union; and that as a result of this pattern of conduct, the Employer had violated Section 8(a) (1), (3) and (5) of the Act.

After extensive proceedings, the National Labor Relations Board issued a decision and order which the Union now brings before this Court. That decision and order, in sum, found that

Darlington Manufacturing Company and Deering, Milliken & Co., Inc. had generally committed the violations alleged. It also ordered them to take certain remedial action. However, the decision and order failed to order Darlington Manufacturing Company and Deering, Milliken & Co., Inc. to recommence operations or to adequately reinstate its employees. Moreover, the decision and order failed to find that Roger Milliken had committed the violations alleged.

II

VENUE

The Union is a "person aggrieved" by the final order of the Board herein, and brings this petition for review in this Court under Section 10(f) of the National Labor Relations Act, 29 U.S.C. Section 160(f).

1941

III

GROUNDS FOR RELIEF

As grounds for relief herein, the Union asserts that the Board's decision and order provided an inadequate remedy for the unfair labor practices alleged and found, and that the order errs in not finding Roger Milliken liable for the violations.

IV

RELIEF REQUESTED

Petitioner prays for a review of the decision and order of the National Labor Relations Board and that:

(1) A copy of this Petition be served upon the National Labor Relations Board;

(2) This Court direct the Board to modify its decision and order an order to give more effective relief to the employees involved, and to hold Roger Milliken liable for the unfair labor practices committed.

(3) Petitioner be given such other relief as the Court may deem proper.

Respectfully submitted,

DAVID E. FELLER,
Feller, Bredhoff & Anker,
1001 Connecticut Ave., N.W.,
Washington 6, D.C.
BENJAMIN WYLE,
PATRICIA EAMES,
99 University Place,
New York 3, New York,
Attorneys for Petitioners.
By: DAVID E. FELLER.

Dated: February 4, 1963.

1942 [File endorsement omitted]

In the United States Court of Appeals for the Fourth Circuit

No. 8861

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., INTERVENORS

Answer of the National Labor Relations Board to Amended Petition for Review of its Order—Filed February 15, 1963

To the Honorable, the JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151 et seq., as amended by 73 Stat. 519), files this Answer to the Amended Petition for Review filed in this proceeding:

1. The Board admits the allegations contained in Section II of the Amended Petition for Review.

2. With respect to the allegations contained in Section I of the Amended Petition for Review, the Board prays reference to

the certified transcript of record for a full and exact statement of the proceedings before the Board, of the pleadings and evidence, of the Board's findings of fact, conclusions of law, and order, and of all other proceedings had in this matter.

3. The Board denies each and every allegation of error contained in Section III of the Amended Petition for Review.

4. The Board requests that the prayer for relief contained in Section IV of the Amended Petition for Review be denied.

1943 5. Pursuant to Section 10(f) of the Act; Rule 27(7) of this Court; and an order issued by the Court of Appeals for the District of Columbia Circuit on December 17, 1962, transferring this cause (previously docketed by that Court as No. 17335) to this Court, the Board has filed with this Court a certified list of all documents, transcripts of testimony, exhibits, and other material comprising the entire record of the proceedings before the Board.

WHEREFORE, the Board prays that this Court cause notice of the filing of the Answer to be served on the petitioner and that this Court enter a decree denying the Amended Petition for Review.

(S) Marcel Mallet-Prevost
MARCEL MALLET-PREVOST
Assistant General Counsel,
National Labor Relations Board.

Dated at Washington, D.C. this 14th day of February, 1963.

1944 In the United States Court of Appeals for the Fourth Circuit

No. 8861

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, PETITIONER

versus

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., INTERVENORS

ON PETITION TO REVIEW AND MODIFY A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Decree—Filed November 19, 1963

THIS CAUSE came on to be heard upon the petition of Textile Workers Union of America, AFL–CIO, to review and

modify a decision and order of the National Labor Relations Board entered on October 18, 1962, in a proceeding entitled Darlington Manufacturing Company, Roger Milliken, Deering, Milliken & Co., Inc., and Textile Workers Union of America, AFL–CIO, known upon the Board's records as Case No. 11–CA–1292; upon the certified list in lieu of a transcript of the record; the answer of the respondent; the amended petition to review, and the answer of the National Labor Relations Board to the amended petition to review, and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth Circuit, that the said petition be, and the same is hereby, denied.

CLEMENT F. HAYNSWORTH, Jr.,
United States Circuit Judge.
HERBERT S. BOREMAN,
United States Circuit Judge.
ALBERT V. BRYAN,
United States Circuit Judge.

I dissent:

J. SPENCER BELL,
United States Circuit Judge.

I concur with the dissent:

SIMON E. SOBELOFF,
Chief Judge, Fourth Circuit.

[File endorsement omitted]

1945 [File endorsement omitted]

In the United States Court of Appeals for the Fourth Circuit

No. 8906

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DEERING, MILLIKEN AND COMPANY, INC., RESPONDENT

Petition for Enforcement of an Order of the National Labor Relations Board—Filed January 25, 1963

To the Honorable, the JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136. U.S.C.,

Secs. 151 *et seq.*, as amended by 73 Stat. 519), respectfully petitions this Court for the enforcement of its order against Respondent Deering, Milliken and Company, Inc., its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as Case No. 11–CA–1071.

In support of this petition the Board respectfully shows:

(1) Upon proceedings had before the Board in said matter, the Board on October 18, 1962, duly stated its findings of fact and conclusions of law, and issued an order directed to Respondents, Darlington Manufacturing Company, Deering, Milliken and Company, Inc., and Deering, Milliken, Incorporated, their officers, agents, successors, and assigns. The Board's Decision and Order was served on Respondents by sending a copy thereof, bearing Government frank, by registered mail, to Respondents' counsel.

(2) Pursuant to Section 10(f) of the Act, Textile Workers Union of America, AFL–CIO, the charging party in the Board proceeding, filed with this Court a petition to review the Board's Decision and Order. Said Petition appears on the docket of the Court as *No. 8861, Textile Workers Union of America*, v. *N.L.R.B.* The Board is filing an answer to said petition. Darlington Manufacturing Company and
1946 Deering Milliken, Inc., two of the respondents in the Board proceedings, also filed a petition to review the Board's Decision and Order. Said petition appears on the docket of this Court as *No. 8790, Darlington Manufacturing Company and Deering Miliken, Inc.*, v. *N.L.R.B.* The Board is filing an answer to said petition and cross-petition for enforcement of its order.

(3) In accordance with said petitions to review, and pursuant to Rule 27(7) of this Court, the Board is filing a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said order was entered, which includes pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board. This same certified also constitutes the certified record in the instant proceeding.

(4) Respondent is engaged in business in the State of South Carolina, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act, as amended.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition to be served upon Respondent, and that this Court take jurisdiction of the proceeding and of all the questions determined therein, and make and enter upon the pleadings, the testimony and evidence, and the proceeding set forth in the transcript, and upon the order made thereupon, a decree enforcing the Board's order and requiring Respondent, its officers, agents, successors, and assigns to comply therewith.

(S) Marcel Mallet-Prevost
MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

January 23, 1963.

1947 In the United States Court of Appeals for the Fourth Circuit

No. 8790.

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., PETITIONERS

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, INTERVENOR

No. 8861

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., INTERVENORS

No. 8906

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DEERING MILLIKEN AND COMPANY, INC., RESPONDENT

Order consolidating cases—January 30, 1963

On motion of the National Labor Relations Board for consolidation of the above-entitled causes for the purposes of

joint appendix, briefs, and oral argument, and for cause shown.

It is ordered that the above-entitled causes be, and they are hereby, consolidated for the purposes of joint appendix, briefs, and oral argument.

SIMON E. SOBELOFF,
Chief Judge, Fourth Circuit.

JANUARY 30, 1963.

[File endorsement omitted]

1948 In the United States Court of Appeals for the Fourth Circuit

No. 8906

NATIONAL LABOR RELATIONS BOARD, PETITIONER

against

DEERING, MILLIKEN AND COMPANY, INC., RESPONDENT

Answer to Petition for Enforcement of an Order of the National Labor Relations Board—Filed February 15, 1963

Deering Milliken, Inc. files this answer to the Petition for Enforcement filed in the above-numbered proceeding by the National Labor Relations Board ("the Board") and alleges to the Court as follows:

1. Respondent admits the allegations contained in paragraph (1) of the Petition except that respondent denies that the order of the Board was "directed to" Deering, Milliken and Company, Inc., for the reason that the corporation of that name is no longer in existence; and Deering Milliken, Inc., alleges that it is the successor to Deering, Milliken and Company, Inc., and that a cross-petition by petitioner National Labor Relations Board to enforce said order against Deering Milliken, Inc. now appears on the docket of this Court as No. 8790.

1949 Darlington Manufacturing Company and Deering Milliken, Inc. v. N.L.R.B. The pertinent facts with respect to the status of petitioner, Deering Milliken, Inc. as the successor to Deering Milliken and Company, Inc. are set forth in the opinion of this Court in Deering Milliken, Inc. v. Johnston, 295 F. 2d 856 (1961).

2. Deering Milliken, Inc. denies the allegation of paragraph (4) of Petition for Enforcement that respondent Deering Milliken and Company, Inc. is or was engaged in business in the State of South Carolina.

WHEREFORE, Deering Milliken, Inc. prays that the petition herein be dismissed and that this Court enter an order denying said petition.

Dated: New York, New York, February 14, 1963.

TOWNLEY, UPDIKE, CARTER & RODGERS

By: JOHN R. SCHOEMER, JR.,

A Member of the Firm, Attorneys for Deering Milliken, Inc., 220 East 42nd Street, New York 17, New York.

1950 [File endorsement omitted]

In the United States Court of Appeals for the Fourth Circuit

No. 8906

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DEERING, MILLIKEN AND COMPANY, RESPONDENT

Response to Answer to Petition for Enforcement of an Order of the National Labor Relations Board—Filed February 28, 1963

On October 18, 1962, the Board issued an order against, *inter alia*, Deering, Milliken and Company, Inc., a New York corporation herein called Deering Milliken (New York), and Deering Milliken, Inc., a Delaware corporation herein called Deering Milliken (Delaware). On the same day, Deering Milliken (Delaware), *inter alia*, filed a petition with this Court to review and set aside that order (No. 8790, *Darlington Manufacturing Company and Deering Milliken, Inc.* v. *N.L.R.B.*). On January 25, 1963, the Board filed a cross-petition seeking enforcement of its order against Deering Milliken (Delaware), *inter alia*, and also filed its petition in the subject case, seeking enforcement of its order against Deering Milliken (New York). Deering Milliken (New York) has not filed an answer to the instant petition for enforcement. However, Deering Milliken (Delaware) has filed an answer to that petition, in which it apparently seeks dismissal of that petition. The Board opposes dismissal of that petition for the following reasons:

1. On January 25, 1963, the Board filed a motion with this Court seeking consolidation of No. 8790 (the review proceeding initiated by Deering Milliken (Delaware)) with the instant

enforcement proceeding against Deering Milliken (New
1951 York). No opposition was filed to this motion, although it was duly served upon Deering Milliken (Delaware), and on January 30, 1963 this Court granted the motion. Moreover, no contention is made that the propriety of the instant enforcement petition is affected by any events after the consolidation order. Under these circumstances, we believe that the request for dismissal comes too late.

2. Deering Milliken (Delaware) contends that because Deering Milliken (New York) has merged into Cotwool Manufacturing Corporation, a Delaware corporation which thereafter assumed the name of Deering Milliken (Delaware), Deering Milliken (New York) is "no longer in existence" and Deering Milliken (Delaware) is its "successor." We submit that this is not a sufficient basis for dismissal of the petition against Deering Milliken (New York). Deering Milliken (Delaware)'s concession that it is Deering Milliken (New York)'s successor does not establish beyond peradventure that its legal liabilities under the terms of the Board's order and its power to discharge them can in no respect be less than those of Deering Milliken (New York). See *N.L.R.B.* v. *Regal Knitwear*, 324 U.S. 9. In fact, Deering Milliken (Delaware)'s action in asking dismissal of the petition against Deering Milliken (New York) suggests that it believes its own liabilities might be enlarged by an order issued against its predecessor as well as against itself. On the other hand, no party could be prejudiced by this Court's action in retaining the proceeding against Deering Milliken (New York) on its docket for disposition together with the other cases with which it has been consolidated. Moreover, because the merger took place after the initiation of the unfair labor practice proceeding against Deering Milliken
(New York), both the relevant State statutes [1] and Rule
1952 25(c) of the Federal Rules of Civil Procedure permit the continuation of this proceeding against that corporation.

3. Deering Milliken (Delaware)'s contention that Deering Milliken (New York) never did business in South Carolina is an allegation going to the merits of the Board's order and not to the venue of this proceeding. A basis for the Board's order

[1] See Section 281 of the Delaware Corporation Law (Title 8), 48 L. Del. 1951, Ch. 353; McKinney's Consolidated Laws of New York, Article 8, Secs. 90 and 91 (the revisions in the pocket part were effected after the instant merger, but in any event do not alter the law in any respect material here).

against Deering Milliken (New York) is its finding (disputed by Deering Milliken (Delaware)) that Deering Milliken (New York) occupies a single-employer status with Darlington Manufacturing Company, which admittedly did business in South Carolina.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the instant petition for enforcement should not be dismissed.

(S) Marcel Mallet-Prevost
MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

1953 In the United States Court of Appeals for the Fourth Circuit

No. 8906

NATIONAL LABOR RELATIONS BOARD, PETITIONER

versus

DEERING, MILLIKEN AND COMPANY, INC., RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Decree—Filed November 19, 1963

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order issued by it against Deering, Milliken and Company, Inc., its officers, agents, successors, and assigns on the 18th day of October, 1962, in a proceeding before said Board known upon its records as Case No. 11–CA–1071; upon the certified list in lieu of a transcript of the record; the answer of the respondent; the response of the National Labor Relations Board to the answer to petition for enforcement; and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth

Circuit, that the said petition for enforcement be, and the same is hereby, denied.

CLEMENT F. HAYNSWORTH, Jr.,
United States Circuit Judge.
HERBERT S. BOREMAN,
United States Circuit Judge.
ALBERT V. BRYAN,
United States Circuit Judge.

I dissent:

J. SPENCER BELL,
United States Circuit Judge.

I concur with the dissent:

SIMON E. SOBELOFF,
Chief Judge, Fourth Circuit.

1954 [Clerk's Certificate to foregoing transcript omitted in printing]

1955 Supreme Court of the United States

October Term, 1963

No. ——

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DARLINGTON MANUFACTURING COMPANY; DEERING MILLIKEN, INC.; DEERING MILLIKEN AND COMPANY; AND TEXTILE WORKERS UNION OF AMERICA, AFL–CIO.

Order Extending Time To File Petition for Writ of Certiorari—February 13, 1964

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 28th, 1964.

EARL WARREN,
Chief Justice of the United States.

Dated this 13th day of February, 1964.

1956 Supreme Court of the United States

October Term, 1963

No. 846

TEXTILE WORKERS UNION OF AMERICA, PETITIONER

vs.

DARLINGTON MANUFACTURING COMPANY, ET AL.

Order allowing certiorari—April 20, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted. The case is consolidated with No. 874 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Stewart and Mr. Justice Goldberg took no part in the consideration or decision of this petition.

1957 Supreme Court of the United States

October Term, 1963

No. 874

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DARLINGTON MANUFACTURING COMPANY, ET AL.

Order allowing certiorari—April 20, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted. The case is consolidated with No. 846 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Stewart and Mr. Justice Goldberg took no part in the consideration or decision of this petition.

U. S. GOVERNMENT PRINTING OFFICE: 1964

Office-Supreme Court, U.S.
FILED
FEB 17 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963

No. [redacted] 37

TEXTILE WORKERS UNION OF AMERICA,

Petitioner,

vs.

DARLINGTON MANUFACTURING COMPANY, DEERING MILLIKEN, INC., DEERING, MILLIKEN & COMPANY, INC., and NATIONAL LABOR RELATIONS BOARD,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PATRICIA EAMES,
99 University Place,
New York, New York 10003,
Attorney for Petitioner.

INDEX

PAGE

CITATIONS TO OPINIONS BELOW 1

JURISDICTION 2

QUESTIONS PRESENTED 2

THE STATUTE INVOLVED 3

STATEMENT OF THE CASE 3

I. Facts Found 4

A. Single-employer Status 5

B. The Employer's Pre-election Efforts to Defeat the Union 5

C. The Election and the Mill Closing 6

D. The Liquidation of the Mill and the Refusal to Bargain 8

E. The Use of the Shutdown of Darlington to Prevent Union Organization at Other Deering Milliken Mills 9

II. The NLRB's Conclusions of Law and Remedial Order 11

III. The Decision of the Court of Appeals 13

REASONS FOR GRANTING THE WRIT 14

I. The Court of Appeals Has Decided Important Questions of Federal Law Which Should Be Settled by This Court 14

A. The Question of Whether the Employer's Conduct Constitutes an Unfair Labor Practice 14

PAGE

B. The Question of an Effective Remedy 17

C. The Question of the Liability of Roger Milliken 19

II. The Decision of the Court of Appeals in This Case Conflicts With Decisions of Other Courts of Appeals 21

CONCLUSION 23

APPENDIX A—The Decision of the Court of Appeals, Fourth Circuit, November 15, 1963, entered November 19, 1963 ..... 1a

APPENDIX B—The National Labor Relations Act 1b

TABLE OF CASES

A. M. Andrews Company of Oregon v. NLRB, 236 F. 2d 44 (9th Cir. 1956) 22

NLRB v. Crow Bar Coal Co., 141 F. 2d 317 (10th Cir. 1944) 23

NLRB v. Lexington Electric Products Co., 283 F. 2d 54 (3rd Cir. 1960) 22

NLRB v. Missouri Transit Co., 250 F. 2d 261 (8th Cir. 1957) 21

NLRB v. Somerset Classics, Inc., 193 F. 2d 613 (2nd Cir. 1952) 22

NLRB v. Somerset Shoe Co., 111 F. 2d 681 (1st Cir. 1940) 23

NLRB v. Wallick, 198 F. 2d 477 (3rd Cir. 1952) 21

Utah Plumbing Contractors Association v. NLRB, 294 F. 2d 165 (10th Cir. 1961) 23

IN THE

Supreme Court of the United States

October Term, 1963

No. _____

TEXTILE WORKERS UNION OF AMERICA,

Petitioner,

vs.

DARLINGTON MANUFACTURING COMPANY, DEERING MILLIKEN, INC., DEERING, MILLIKEN & COMPANY, INC., and NATIONAL LABOR RELATIONS BOARD,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, Textile Workers Union of America, AFL-CIO, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above-entitled case on November 19, 1963.

Citations to Opinions Below

The opinion of the Court of Appeals is reported at 54LRRM 2499 (4th Cir. 1963) (not yet officially reported). It is printed at Appendix A, *infra*, p. 1a. The decision of the National Labor Relations Board is reported at 139 NLRB 241 (1962). It is printed in the Joint Appendix, pp. 1-33.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on November 19, 1963. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1) and under §10(e) of the National Labor Relations Act, 29 U. S. C. §160(e).

Questions Presented

1) Where the National Labor Relations Board has found that a single-employer status exists between a chain of related corporations and one particular one of these corporations, a plant corporation (and where that finding is not controverted by the Circuit Court of Appeals), and where the particular plant is closed and its corporation extinguished in order to punish its employees for voting in favor of unionization in an NLRB election, and to deter employees in other plants in the chain from organizing a union, does this constitute an abolition of the entire employer entity or only the closing down of part of the operation? If the action constitutes the closing down of part of the operation, is it the "absolute prerogative" of the employer to do so, and is the discontinuation thus conduct which connot constitute an unfair labor practice? If the action constitutes an abolition of the entire employer entity, is it the "absolute prerogative" of the employer to take this action, and is the action thus conduct which cannot constitute an unfair labor practice?

2) If the closing down of a plant and the extinguishing of its corporation in order to punish its employees for voting in favor of unionization and to deter employees in the

employer's plants from organizing *does* constitute an unfair labor practice, does a remedy which does not restore the situation to that which would have obtained but for the illegal discrimination constitute a proper remedy?

3) Where the NLRB finds that one individual has exercised control of the labor relations policies of an employer and has himself caused the commission of acts found to be unfair labor practices, is he rendered not liable for these unfair labor practices because the charge against him was filed against "Roger Milliken, President" rather than simply against "Roger Milliken?"

The Statute Involved

The statutory provisions involved are the following sections of the National Labor Relations Act: §2(2), 29 U. S. C. §152(2); §2(3), 29 U. S. C. §152(3); §7, 29 U. S. C. §157; §8(a)(1), 29 U. S. C. §158(a)(1); §8(a)(3), 29 U. S. C. §158(a)(3); §8(a)(5), 29 U. S. C. §158(a)(5); §10(c), 29 U. S. C. §160(c). They are printed at Appendix B, *infra*, p. 1b.

Statement of the Case

These consolidated cases arise out of a charge and amended charge filed in accordance with Section 10(b) of the National Labor Relations Act by Textile Workers Union of America (hereinafter sometimes called TWUA or the Union) on September 6, 1956 and November 1, 1956 against Darlington Manufacturing Company (hereinafter sometimes called Darlington), Roger Milliken, President, and Deering Milliken & Company, Inc. (hereinafter sometimes

called Deering Milliken). On October 18, 1962, the National Labor Relations Board issued its order against Darlington, Deering Milliken and its successor in interest, Deering Milliken, Inc. Darlington, Deering Milliken, Inc. and TWUA appealed the NLRB decision to the Circuit Court, in accordance with §10(f) of the National Labor Relations Act, and the NLRB petitioned the Circuit Court for enforcement against Deering Milliken & Company, Inc., in accordance with the provisions of Section 10(e) of the National Labor Relations Act. On November 19, 1963, the Court of Appeals denied enforcement of the Board's Order.

I. Facts Found

The Court of Appeals accepted the findings of fact made by the National Labor Relations Board. The Court's refusal to enforce the decision of the Board was based upon conclusions of law which differed from the Board's conclusions, not upon any disagreement as to the facts in the case. Thus, the facts summarized herein are primarily those found by the NLRB, supplemented by additional facts from the record not referred to by the NLRB. ("J. A." references are to the Joint Appendix. "S. A." referenees are to that portion of the Joint Appendix inadvertantly omitted by the printer from the bound volumes of Appendix and therefore printed as an Appendix (pp. 176-182) to the NLRB's brief to the Fourth Circuit. "Tr." references are to the original transcript. References preceding a semicolon are to the Board's finding; succeeding references are to the supporting evidence.)

A. Single-Employer Status

The NLRB found (and the Court did not find to the contrary) that Darlington, Deering Milliken, Deering Milliken, Inc., and other affiliated corporations constituted a single employer within the meaning of the law, on the grounds that there is among the corporations a sufficient degree of common ownership and common control of labor relations and operations to constitute a common enterprise (J. A. 23). Briefly, the supporting evidence relied upon by the Board consisted of Milliken family ownership of a substantial majority of the stock of all affiliated corporations, identity of officers and directors of affiliated corporations, the Millikens' exercised ability to eliminate corporate lines where such elimination was to their advantage, the exercise by one individual—Roger Milliken—of control over the labor relations of all affiliated corporations, and the actual operation of the interlocking corporations as an integrated enterprise (J. A. 23-27).

B. The Employer's Pre-election Efforts to Defeat the Union

TWUA began its organizing campaign at Darlington in March of 1956. The Employer responded with a classic full-scale anti-union campaign, the focal point of which was an unremitting series of threats by supervisory personnel that the mill would be closed if the employees chose union representation. (The Board's count was that the record contained approximately 30 such threats. J. A. 4, Note 7.) The threats were accompanied by extensive interrogation of employees by supervisors regarding their union activities. (The Board counted about 20 instances of interrogation. J. A. 4, Note 6).

C. The Election and the Mill Closing

The Employer's pre-election campaign of coercion was almost successful; on September 6, 1956, the Union won the NLRB election by a margin of only 256 to 248 (J. A. 250-251). Local management immediately notified Roger Milliken of the election results (J. A. 279). On the following day Milliken decided to "recommend" the closing of the mill to Darlington's directors and stockholders (J. A. 4; 1092). He testified (J. A. 4; 457):

> "I felt that as a result of the campaign that had been conducted and the promises and statements made in these letters that had been distributed [by the Union], that if we had some possible hope of achieving competitive . . . [costs] . . . by taking advantage of new machinery that was being put in, that this hope had diminished as a result of the election because a majority of the employees had voted in favor of the union."

Milliken immediately called a special meeting of the Darlington Board of Directors for September 12th (J. A. 5; 279-280). The Board of Directors met only for an hour and one-quarter, and during that time other business was transacted: a dividend was declared, a new director was elected and complex changes in the Deering Milliken Mills Retirement Plan were approved (J. A. 427, 448, 1257-1261, 1290, 1322). In the remaining portion of one hour the Directors voted unanimously to liquidate the mill and to call a special meeting of stockholders to approve the proposal (J. A. 431). After the Board of Directors' meeting the Darlington supervisors informed the employees that the mill was being closed because of the Union's victory

(J. A. 5, note 10; the Board refers to record evidence of about 25 statements by supervisors to employees that the Union's election victory was responsible for the closing of the plant and would result in the blacklisting of the employees in their search for new jobs.) At this time a petition disavowing the Union was circulated in the plant. Members of management sought to convince employees to support this petition (J. A. 5, note 10).

The stockholders met on October 17 to consider a resolution which recited that the directors were recommending dissolution of the corporation because of "certain developments" that related to Darlington's operations. Roger Milliken identified the "certain developments" as ". . . the recent election where the majority of the people in the plant . . . [were] . . . for the Union . . ." (J. A. 5; 292). South Carolina State Senator Mozingo, who was present at the stockholders' meeting, gave uncontradicted testimony that Milliken opened the meeting with the statement "that on September 6, when [the employees] voted for a union . . . he decided to close the mill." The stockholders approved the resolution to liquidate. Senator Mozingo testified, also without contradiction, that he had the following conversation with Milliken after the meeting (J. A. 266):

> ". . . [Milliken] said, 'Well, you will probably get another industry here in Darlington,' and I said, 'How do you expect us to get another industry when you are leaving a s[t]igma on us here that can't be erased . . . Not only that, it is unfair because eighty-three percent of these people I am told have signed a petition to go back to work . . .' he said, 'As long as there are seventeen percent of the hard core crowd here, I refuse to run the mill.' "

D. The Liquidation of the Mill and the Refusal to Bargain.

Before the Board of Directors meeting the Union had asked Darlington for a bargaining conference. The Company replied that the Union would have to wait until it was officially certified by the Board; on the same day the company filed objections to the election. Although these objections were overruled, they did delay certification (J. A. 5, 5 note 9; 253).

After the Board of Directors met, the mill took no new orders from customers; it continued to operate the plant to fill the orders it had. Of these old orders, it filled some, and cancelled others (J. A. 933-934, 955-956, Tr. 2856-2862). Those orders which Darlington was unable to fill or cancel were filled by other Deering Milliken mills (J. A. 928, 934, 941-943, 950, 1788-1789). As the work ran out, the employees worked shorter and shorter hours and were eventually terminated (J. A. 11, note 22). On October 17th the Board of Directors authorized a partial liquidating dividend amounting to one and one-half million dollars—about 40% of the mill's assets (J. A. 1274, G. C. Ex. 9, 15(f), Tr. 187, 901-904, 1129).

On October 24th TWUA was certified. The next day the Union wired Plant Manager Oeland urging that a bargaining conference be held by October 30th. By letter dated November 2nd, the Union requested a list of all employees who had been terminated, their job classifications and the date of their termination (J. A. 1249, Tr. 24). A bargaining conference was finally held on November 7th. At it, the Union asked for information regarding wages and fringe benefits. The Company refused to provide the information (J. A. 254). By letter dated November 26th, the Union asked the Company for the names of all employees, together with their length of service, job classifications, job duties

and individual wage rates and for other information regarding jobs and wages. The Company replied, "Before we give you information, we will have to be assured that it is for a legitimate use." (J. A. 1250-1253).

The operations of the plant ceased altogether on November 24, 1956; and on December 12 and 13, 1956, the plant equipment was sold at auction (J. A. 6; 258). Thereafter, the Deering Milliken corporation continued to sell, to Darlington's former customers, textiles of a kind previously made by Darlington but now made by other Deering Milliken mills (J. A. 934-941, 947-957, 965-966).

E. The Use of the Shutdown of Darlington to Prevent Union Organization at Other Deering Milliken Mills

On November 14, 1956, Roger Milliken forwarded to the treasurers of a number of Deering Milliken mills, and to certain employees and officials of the Deering Milliken Service Corporation, a news item describing the permanent shutdown of a Massachusetts bedspread factory because "since signing a labor contract last February, the Union had kept the mill in a state of turmoil and reduced efficiency and production to the point that the owners were convinced the Mill had no future and investment of further funds [was] not justified" (G. C. Ex. N-1, J. A. 1677, 969). In the same mailing Milliken sent a memorandum explaining the importance of a magazine article from *America's Textile Reporter*, together with a copy of the article (G. C. Ex. N-1, J. A. 25; 969, S. A. 176-182.) This was the mailing which the NLRB stated was "obviously intended as a primer to the managers of the mills in combatting union organization" (J. A. 25). Milliken stated that the article showed that "this magazine made a real investigation in Darlington" (J. A. 25; 969). He further stated, "the unions are

going to be making a tremendous drive all through this area, and there are few things that are more important to us than making sure that the leaders in your community understand and are sympathetic to what you are trying to do" (J. A. 25; 969, Tr. 2915). He urged a careful reading of the second part of the article which stated, *inter alia* (S. A. 182):

> "If the people of Darlington knew anything of the the Deering Milliken record, they would know that that management * * * has [not] intended to share the prerogatives of management with labor union leaders. This has been the case through three generations of Milliken operations. When the Madison Woolen Mills of Madison, Maine, became not only unprofitable but unionized Mr. Gerrish Milliken liquidated it * * *. When the Dallas Manufacturing Company of Huntsbille, Alabama, became unionized, the Millikens liquidated it, contrary to the opinion of many local people that such would not be the case. We ourselves are small shareholders in Darlington and from experience and acquaintanceship, we knew the minute the union election vote was announced that we would receive a call for a special meeting to vote for liquidation."

The article also described the economic distress in the City of Darlington (with a population which Rand McNally Cosmopolitan World Atlas (1959) states is less than 6,000) within a week after the shutdown was announced, with the prospect that 560 jobs and a weekly payroll of more than $29,000 would be lost to the economy of the city (J. A. 284-285, 969, S. A. 177-181). In addition, the article pointed out that the employees who voted against the Union would have to "suffer" along with those who voted for it.

II. The NLRB's Conclusions of Law and Remedial Order

The Board unanimously found that Darlington violated Section 8(a)(1) of the Act by threatening employees that the plant would be shut down if the Union won the election, by telling the employees that the mill had been shut down for this reason, by threatening that union adherents would be blacklisted, by supporting a petition disavowing the Union, and by interrogating its employees about their union activity (J. A. 6-7). A majority of the Board also found that Darlington, Deering Milliken, Deering Milliken, Inc., and affiliated companies, occupy the status of a single employer, and that, therefore, such conduct also constituted a statutory violation by Deering Milliken and Deering Milliken, Inc. (J. A. 23-27). The Board unanimously found that the plant was shut down in order to discourage the employees' union activity and in order to avoid bargaining with the Union (J. A. 7-9). A majority of the Board found that the shutdown constituted a violation of Section 8(a)(3), (5), and (1) of the Act by Darlington and by Deering Milliken (J. A. 10-18, 23-27). The Board unanimously found that Darlington violated Section 8(a)(5) and (1) of the Act by refusing to bargain with respect to the tenure of employment of the employees in the Darlington mill, and by refusing to furnish the Union with wage and related bargaining data (J. A. 18-19). A majority of the Board also found that such conduct constituted a statutory violation by Deering Milliken.

The Board dismissed the complaint as to Roger Milliken individually, on the ground that the underlying charge was insufficient in that it charged him as "Roger Milliken, Presi-

dent," and that this did not constitute a charge against Roger Milliken (J. A. 29-30).

The Board's order requires Darlington, Deering Milliken, and Deering Milliken, Inc., to cease and desist from the unfair labor practices found; and, if operations are resumed in Darlington, South Carolina, to bargain with the Union as the employees' exclusive representative (J. A. 30-31). Darlington, Deering Milliken, and Deering Milliken, Inc., are further required to make whole all the employees who were on the payroll on October 13, 1956 (the date on which the stockholders voted to liquidate the plant), for any loss of pay they may have suffered as a result of the discrimination against them. If the Darlington plant does not reopen, the backpay period is to terminate when the employees are able to obtain substantially equivalent employment, or the date on which they are placed on a preferential hiring list at other Deering Milliken mills (J. A. 21-23, 27-28). They are also required to advertise in a Darlington newspaper, and to mail to each employee, copies of an appropriate notice (J. A. 32, 39-41). Deering Milliken and Deering Milliken, Inc., are also required to offer employment or placement on a preferential hiring list to the Darlington employees at other Deering Milliken mills in South Carolina or adjacent States; to pay the travel and moving expenses of the employees who accept the offer; and to bargain collectively with the Union for the purpose of reaching an agreement as to the mode of operation of the preferential hiring lists, and as to the terms and conditions under which the former employees of the Darlington mill may, if they desire obtain such employment (J. A. 27-29, 32-33). In

addition, Deering Milliken and Deering Milliken, Inc., are required to mail a notice to this effect to each employee on the payroll of the Darlington mill on October 13, 1956 (J. A. 32-33, 42). In its order, the Board reserves the right to modify the backpay and reinstatement provisions, if necessitated by circumstances not now apparent (J. A. 33).

III. The Decision of the Court of Appeals

The Court of Appeals denied enforcement of the Board's Order (appendix A, p. 1a, *infra*). The majority on the Court, held that "to go out of business *in toto*, or to discontinue it in part, permanently at any time . . . was Darlington's absolute prerogative." Having found that Darlington was without liability because of this absolute right, the Court held that the finding that Darlington was without liability prevented the "project [ion of] Darlington's liability . . . upon [Deering] Milliken"; "furthermore, even if Darlington was a division of Milliken, the transfer of Darlington's liability to Milliken upon the single employer principle is precluded because, as we have stated, a part, like the whole, of a business may be abolished when the extinction is consummated in circumstances like the present."

As to the violations of the law found by the NLRB independent of the actual mill closing—Darlington's pre- and post- election statements constituting interference in violation of §8(a)(1) of the Act, and the refusals to bargain constituting violations of §8(a)(5) of the Act—the Court held that "remedies for these offenses are not now available as Darlington is no longer alive."

The dissenting minority of the Court of Appeals agreed with the NLRB's finding that Deering Milliken's closing of the Darlington Mill was an unfair labor practice; and that the employer's threats, interrogation, refusal to bargain, and refusal to provide bargaining data, all constituted unfair labor practices. (Appendix A, p. 14a, *infra*).

Reasons for Granting the Writ

I. The Court of Appeals Has Decided Important Questions of Federal Law Which Should Be Settled by This Court.

A. The Question of Whether the Employer's Conduct Constitutes an Unfair Labor Practice

The United States Government has guaranteed to the working people of this country that it will protect their "right to self organization, to form, join, or assist labor organizations" (§7 of the National Labor Relations Act). In Darlington, South Carolina, in 1956, 256 of Deering Milliken's Darlington employees relied upon this guarantee and exercised their right to vote that they wanted to be represented by Textile Workers Union of America. Within a week their Employer, with utter disdain for the law, struck them down; more than 500 jobs were snuffed out in order to punish a group of workers for daring to exercise their rights. The economy of the town was shattered.

In the Darlington case the National Labor Relations Board has acted to make good the promise of protection of their rights held out to workers who seek to organize, by the National Labor Relations Act. It is important that

federal law be a protection rather than a trap for the citizens who rely upon it. It is therefore important, as well as proper, that the action of the NLRB be upheld.

Deering Miliken did not stop when it had destroyed the livelihoods of its 500 Darlington employees in order to punish them for their union activities. It followed up this act with a warning to the employees in the 26 other Deering Milliken mills. Roger Milliken mailed to the other mills the article from *America's Textile Reporter* which announced that Darlington was only one instance of the standard Deering Milliken policy of liquidating any mill which "became unionized." He directed the managers of these various mills to make sure that their communities understood the Deering Milliken operation better than the Darlington community had understood it. In short, Roger Milliken put all the other thousands of Deering Milliken workers on notice that if they were so foolish as to believe that they had any rights under federal law, they would get the same treatment from their employer that the Darlington workers had received.

For as long as the economic massacre at Darlington goes unremedied, all of the other Deering Milliken employees will be deprived of their rights under the National Labor Relations Act, since no sane worker will seek to exercise illusory rights if it is clear that the United States does not stand behind the rights which federal law supposedly guarantees.

And it is not only the employees of Deering Milliken who have been affected by the Darlington plant shutdown. All southern workers—and particularly the hundreds of

thousands of southern textile workers—have felt the impact of Darlington. The closing of the Darlington mill was a major news story throughout the South. And southern employers did not let that story die; for eight years it has been told and retold during union organizing campaigns throughout the South. The newspaper headlines on the day of the NLRB decision were a ray of hope to southern workers who wanted to believe that it is possible to exercise the rights provided by the National Labor Relations Act. But the even larger headlines throughout the South on the day of the Circuit Court's decision again confronted southern workers with the mockery of having a right but no remedy.

So much for the reasons why it is of serious practical and humane importance to southern workers that this Court uphold the NLRB decision that the mill closing was an unfair labor pracice. Let us now consider the legal importance of the issue.

The statute provides flatly that it is an unfair labor practice for an employer to discourage membership in any labor organization by discrimination with regard to hire or tenure of employment. The cases are clear that it is an unfair labor practice if an employer discriminatorily fires one, two, or ten workers—in spite of the fact that at common law an employer has the absolute prerogative to discharge. The decision of the Circuit Court carves an exception out of the Statute for that situation where an employer discriminatorily but permanently closes down an entire department and fires *all* the workers in it. Congress did not write that exception into the statute; on the con-

trary, any such exception is an absolute violation of the clear command of Section 8(a)(3) of the Act.

It has been argued that the newly-created exception is not important because few employers will choose permanently to shut down a whole department or a whole plant. But in fact any of the vast twentieth century multiplant employers can shut down one plant and produce in its other plants just as easily as Deering Milliken has done. The shutting down of a mere department is even easier.

The threat that if workers organize, management will close down the mill is one of the most frequently used of all anti-union coercive tactics. No one doubts that it is unlawful for an employer to make this threat. Presumably then, the decisions of federal courts and of the National Labor Relations Board should have the effect of discouraging employers from making this threat. But if the courts of the United States declare that it was lawful for this employer to close down the Darlington plant in retaliation for the workers' union organization, then their decision will encourage other employers to make the unlawful threat to take the same action, not discourage them from doing so.

B. The Question of an Effective Remedy

For eight years now Deering Milliken has been teaching its employees and all other southern workers the lesson that the rights which the government proclaims in the National Labor Relations Act are an illusion. The major reason why this Court should grant certiorari and reverse the decision of the Circuit Court is, essentially, to undo the effect of this lesson. This undoing requires two elements: (1) the

essentially theoretical act of holding Deering Milliken's conduct at Darlington to be an unfair labor practice, and (2) the practically effective act of really righting the wrong which was done by Deering Milliken. If the law only goes as far as to say that Deering Milliken's action was wrong, and does not make the injured workers whole, then the pattern of plant-closing threats will continue.

The Labor Board's proposed remedy is that the employer pay to the workers who were discharged because of the union back pay for the period, for each individual employee, from the date of his discharge to the date on which he was able to obtain substantially equivalent employment, and that Deering Milliken offer these workers employment in its other mills "in South Carolina or adjacent states" to the extent that jobs are open in these mills, without permitting the discriminatees to exercise their seniority to displace employees with less seniority. Those discriminatees for whom there are no slots open are to be placed upon a preferential hiring list with back pay tolling at the time they are listed. The employer is ordered to bargain with the Union regarding the mechanics of workers' obtaining employment at other Deering Milliken mills and the mechanics of the hiring lists.

But this does not undo the injury which was done to the Darlington workers. These workers, if it had not been for the unfair labor practices, would have continued to live and work in their own home community and would have been represented on the job by the Union. They were part of the Darlington community. They belonged to that community by ties of family, friendship, tradition and property.

They include workers such as Mrs. Nora King, who began working for Darlington in 1907 when she was 7 years old (J. A. 379), and Mr. John Benjamin Plummer, who had worked for the Company for 38 years (J. A. 319). The situation of Mrs. King and Mr. Plummer is not exceptional. Taking the General Counsel's witnesses as as good a random sample of the Darlington workers as any (and the only sample available in the record), out of the 35 witnesses, 34 clearly indicated their length of employment. Approximately half had worked at the mill 15 years or more, and more than two-thirds had worked there ten years or more.

The only way in which the injury which was done can be undone is to order Deering Milliken to reopen a Darlington mill and offer reinstatement there. Failing that, the Court should at least eliminate the worst inequities in the remedy fashioned by the NLRB in order to protect the pedagogic function of the decision in this case. It is that function which makes this decision so important for all southern workers.

C. The Question of the Liability of Roger Milliken

Decisions are not made by corporations. They are made by the individual men who at various levels are the bosses within the corporations. In this case we have the agreement of all who considered the question—the NLRB, the Trial Examiner and the minority on the Court of Appeals (the majority had no occasion to consider the question)—that it was Roger Milliken who created, shaped and pressed forward the entire pattern of unfair labor practices at Darlington. He decided to close the plant. He stated that, "as long as there are 17% of these hard core labor people

here, I refuse to operate the mill." (J. A. 268); he circulated to the other Deering Milliken mills the directive to publicize in their communities the report that Deering Milliken would always shut down any plant which was organized.

The definition of an employer in the National Labor Relations Act explicitly provides that "the term 'employer' includes any person acting as an agent of an employer." (§2(2)). The cases clearly hold individual corporate officers liable for unfair labor practices committed directly by them.

But in this case the Board found that Roger Milliken could not be held liable for the unfair labor practices which he had committed for the reason that a charge filed against "Roger Milliken, President" was not "sufficient to support a complaint against Roger Milliken as an individual" (J. A. 29).

The Board's decision is incorrect. A charge against "Roger Milliken, President" has an effect identical to the effect of a charge against "Roger Milliken"; under §2(2) there can be no difference between charging a man as an individual or principal and charging him as an agent, since the statute makes it explicit that agents are to be treated as employers just as are principals.

It is important that this error be corrected. Corporation presidents who throw 500 workers out on to the street in order to demonstrate that they will not permit southern textile workers to exercise the rights granted by the federal government should not be allowed to hide behind their corporations and thus avoid responsibility for their individual decision making. Some 20 years ago the government of

the United States took the position at Nuremberg that individuals who break the law could not pass the blame for their individual acts off upon "the system." Our government did not take this position merely to seek vengeance. We looked to the future and sought to prevent the commission of future atrocities by establishing the principle that the individual is responsible for his acts.

The responsibility we impose in South Carolina should be no less than the responsibility we imposed in Germany—and for the same reason. Until individual bosses are held personally responsible for their economic Lidices, they will not be deterred from repeating them.

II. The Decision of the Court of Appeals in This Case Conflicts With Decisions of Other Court of Appeals

The Court here holds that, in any case in which the shutdown is permanent, an employer is protected from being held liable for closing down a part of its operation in order to discriminate against pro-union workers in that segment of the operation. But other courts of appeals have squarely held that the discriminatory permanent shutdown of part of a business violates the statute.

In *NLRB* v. *Missouri Transit Co.*, 250 F. 2d 261 (8th Cir. 1957) the employer had sold all the equipment used in one of its two operations, discontinued that operation, and fired all of the employees who had worked on it. The Board found that the sale and the discharges were discriminatory and were therefore unfair labor practices, and ordered the company to place the dischargees on a preferential hiring list and to pay back pay for the period between

the discharges and the reinstatement (reinstatement either to jobs or to status on the preferential hiring list.) The Eighth Circuit enforced the Board's order.

In *NLRB* v. *Wallick*, 198 F. 2d 477 (3rd Cir. 1952), the Board order required a respondent partnership which operated several enterprises engaged in the manufacture of ladies' garments either to reopen a plant which it had closed in violation of the Act because its employees had organized or to give its employees an opportunity to work in other plants operated by the partnership (even though the closed plant was owned by a separate corporation the stock of which was owned by the individual partners). The Third Circuit enforced.

The courts also held that the discriminatory permanent shutdown of part of a business violates the state in: *A. M. Andrews Company of Oregon* v. *NLRB*, 236 F. 2d 44 (9th Cir. 1956); *NLRB* v. *Lexington Electric Products Co.*, 283 F. 2d 54 (3rd Cir. 1960) and *NLRB* v. *Somerset Classics, Inc.*, 193 F. 2d 613 (2nd Cir. 1952). All of these holdings are of course in direct conflict with the holding of the Fourth Circuit in the instant case that it is the absolute right of an employer to abolish a part of its business even for discriminatory reasons.

If this Court finds that this closing down of one plant in the chain constitutes the abolition of the entire employer entity, then presumably it can find that Darlington committed an unfair labor practice (by its final closing down) only by holding that the abolition of the whole of a business can constitute an unfair labor practice. (Such a holding would, of course, not be necessary in order to find that the

layoffs of those employees who were laid off during the tapering-down period prior to the complete closing of the business were, for that period, an unfair labor practice.) As the Court of Appeals and the Labor Board stated, there are apparently no earlier cases treating of a discriminatory total permanent shutdown because of union activities. But surely the cases holding that a discriminatory total *temporary* shutdown constitutes an unfair labor practice, conflict in principle, if not head-on, with the instant case. Surely, if it is unlawful to discriminate by a temporary shutdown, it is the more unlawful to discriminate permanently. The First and Tenth Circuits have held that total temporary discriminatory shutdowns violate the Act in *NLRB* v. *Somerset Shoe Co.*, 111 F. 2d 681 (1st Cir. 1940), *Utah Plumbing Contractors Association* v. *NLRB*, 294 F. 2d 165 (10 Cir. 1961), and *NLRB* v. *Crow Bar Coal Co.*, 141 F. 2d 317 (10 Cir. 1944).

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Dated: New York, N. Y.,
February 10, 1964.

Respectfully submitted,

PATRICIA EAMES,
Attorney for Petitioner.

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 8790.

DARLINGTON MANUFACTURING COMPANY and DEERING MILLIKEN, INC.,
Petitioners,

versus

NATIONAL LABOR RELATIONS BOARD,
Respondent.
TEXTILE WORKERS UNION OF AMERICA, AFL-CIO,
Intervenor.

ON PETITION TO REVIEW AND SET ASIDE ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

No. 8861.

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO,
Petitioner,

versus

NATIONAL LABOR RELATIONS BOARD,
Respondent.
DARLINGTON MANUFACTURING COMPANY

Appendix A

and DEERING MILLIKEN, INC.,
Intervenors.

ON PETITION TO REVIEW AND MODIFY A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

No. 8906.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

DEERING MILLIKEN AND COMPANY, INC.
Respondent.

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

(Argued June 13, 1963. Decided November 15, 1963.)

Before SOBELOFF, Chief Judge, and HAYNSWORTH, BOREMAN, BRYAN and BELL, Circuit Judges, sitting en banc.

ALBERT V. BRYAN, Circuit Judge:

The National Labor Relations Board in these consolidated cases has made these pivotal decisions[1]:

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[1] 139 NLRB No. 23, decided October 18, 1962.

Appendix A

1. Darlington Manufacturing Company committed an unfair labor practice under the National Labor Relations Act, Section 8(a)(3)[2]—forbidding discrimination in regard to tenure of employment—by closing and liquidating its only plant, and discharging its employees, in 1956 because of the election of Textile Workers Union of America, AFL-CIO as bargaining representative for the employees;

2. Darlington must pay all of such discharged employees their wages, less current net earnings, "until the discharged employees are able to obtain substantially equivalent employment" or until they are put on a preferential hiring list by Deering Milliken, Inc.; and

3. Deering Milliken, Inc. and its affiliates are liable for the payment of these wages on the ground that Darlington, with others, was such an affiliate of Milliken and together they constituted a single employer.

In petition No. 8790 Darlington and Milliken seek to vacate these Board orders. In No. 8861 the Union, which was the charging party before the Board, prays that the orders be enlarged to require also the reopening of the Darlington plant with reinstatement of the employees, and that Roger Milliken, president of both Darlington and Milliken, notwithstanding the contrary decision of the Board, be held personally liable to satisfy the orders. In No. 8906 the Board seeks enforcement against Milliken of the Darlington liabilities.

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[2] 29 U. S. C. §158(a)(3).

Appendix A

As these actions have common issues they have been argued and considered together. We decline to enforce these orders of the Board against Darlington and Milliken.

Darlington, chartered under the laws of South Carolina, operated a print cloth mill there, manufacturing and selling cotton greige goods. It had no other plant. In 1937 Darlington went through a Section 77B bankruptcy proceeding, 11 U.S.C. § 207 (1937 ed.). Milliken, then known as Deering Milliken & Co., Inc., as one of the largest creditors, received in payment of its debt about 41% of Darlington's common stock. When Darlington was liquidated in 1956, as previously mentioned, there were outstanding 150,000 shares of common stock owned as follows:

Deering Milliken & Co., Inc	41.4%
Cotwool Manufacturing Corp.	18.3
Roger Milliken and members of his immediate family	6.4
Directors and employees of Deering Milliken & Co.	2.9
Outsiders or non-Milliken family or interests (about 100 stockholders living in South Carolina, 50 in New York, and more than 50 scattered over the United States)	31.0
	100.0%

In March 1956 the Union commenced a campaign to organize the Darlington employees and to become their

bargaining representative. An election conducted under the direction of the Board was called for September 6, 1956. The Union won, 258 to 252.

On September 12 Darlington filed objection to the election. A conference was requested on the same day by the Union to discuss a collective bargaining agreement. The request was refused by Darlington on the ground the election protest had not been decided and the Union had not been certified.

Also on September 12, the Board of Directors met, with all of them present. Following a brief discussion of the business status of Darlington, they resolved to recommend to the stockholders the liquidation and dissolution of the corporation. A meeting of the stockholders to act upon the resolution was called for October 17. Employees of Darlington were at once told of the recommendation. While no new ones were accepted, the plant continued to fill the orders then in hand. The objection of Darlington to the election was overruled on October 8, and the Union shortly certified as the bargaining representative.

With the stockholders on October 17 adopting the recommendation of the Board of Directors by a vote of 134,911 and shares 3,774, the officers proceeded with the liquidation. Discharge of employees occurred over a span of about six weeks: from 510 employees on October 13, the payroll dropped to 460 on October 20, to 345 on October 27 and to none when the plant closed on November 24. The machinery and equipment were sold at auction on

December 12 and 13, 1956. Since that time Darlington has not operated any plant in South Carolina or elsewhere[3].

Deering Milliken & Co., Inc.'s capital stock was owned in a majority amount by the members of the Milliken family. In addition they were the major (but by no means the only) shareholders in Darlington and in certain other textile corporations. The latter are the corporations referred to by the Board and in this opinion—somewhat imprecisely—as "affiliated corporations" of Milliken. Prior to 1960 Deering Milliken & Co., Inc. was not a manufactory. It was the exclusive sales representative of the producing corporations controlled by the Milliken family.

In June 1960 Deering Milliken & Co., Inc. was merged into the Cotwool Manufacturing Corporation, and the latter's name then changed to Deering, Milliken, Inc., herein known as Milliken. A majority of its stock was owned by the Milliken family. After the merger Milliken carried on the textile manufacturing formerly pursued by Cotwool.

The finding of the Board—that the decision to close the mill was an unfair labor practice under §8(a)(3)—was spelled out in this way:

> "Darlington discriminated in regard to its employees' tenure of employment by closing its plant—thereby discharged the employees—and, because the plant closing was the direct result of the employees'

[3] A concise history of the proceedings in this case appears in Judge Haynsworth's opinion for this Court in Deering Milliken, Inc. v. Johnston, 295 F. 2d 856 (1961).

> selection of the Charging Union as their collective bargaining representative, Darlington's retaliation against the employees for their activities in behalf of the Union discouraged the employees' continued membership in the Union."

Abridged and as pertinent here the terms of §8(a)(3) are these:

> "It shall be an unfair labor practice for an employer —by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

In this determination the Board acknowledged, as the Trial Examiner had found, that there were economic considerations sufficient in themselves to support the decision by Darlington to terminate operations. However, both the Examiner and the Board concluded that "the decision to close the mill was not a fact based on economic factors, and that, but for the Union's election victory, that decision would not then have been made."

Upon this premise the Board declared all the closure discharges to be unlawful, justifying the usual remedy of reinstatement and reimbursement for loss of pay. But with the shutdown complete and permanent reinstatement not achievable, the relief was necessarily directed primarily to restitution of wages. The monetary redress was awarded by the Board as follows:

> "[W]e shall therefore order the Respondent, Darlington, to provide back pay *until the discharged em-*

ployees are able to obtain substantially equivalent employment". [Accent added.]

Further, the Board overruling the Trial Examiner found that "Darlington occupied a single employer status with Deering Milliken and its affiliated corporations". On this basis Milliken and its affiliates were declared "liable for back pay to the same extent as we have heretofore directed with respect to Darlington" and were ordered to place the discharged employees on a preferred hiring list. Additionally, Milliken was commanded to offer employment to these discharged workers in its other mills in South Carolina or nearby States, without prejudice to their seniority and other privileges.

All of these orders were qualified by the proviso that if no work was available at the Milliken mills, then the accumulation of back pay would be tolled as and when the dischargees were put upon Milliken's preferential hiring list.

I. Our opinion is that the decision to close the plant was not an unfair labor practice. In this we accept the findings of fact made by the Board. While, as just observed, the evidence discloses substantial economic reasons warranting the determination to close the plant without reference to the entry of the Union into the plant, we accede arguendo to the contention of the Board that these reasons were not acted upon. Even if they were, however, we shall assume, again arguendo, with the Board that if unionization also played a part in the resolve to close the

plant, then the contribution of this factor may be considered as responsible for the cessation.

To go out of business in toto, or to discontinue it in part, permanently at any time, we think was Darlington's absolute prerogative. The fundamental purpose of the National Labor Relations Act is to preserve and protect the rights of both industry and labor so long as they are in the relationship of employer and employee. But the statute's scope does not exceed that province. It does not compel a person to become or remain an employee. It does not compel one to become or remain an employer. Either may withdraw from that status with immunity, so long as the obligations of any employment contract have been met. Such withdrawal, alone and of itself, does not create any obligation of either the employer or the employee to the other under the Act. *Cf.* Dissenting opinion of Board Member Rodgers in the present case. If a cessation of business is adopted to avoid labor relations, the proprietor pays the price of it: permanent disssolution of his business, in whole or in part. A statute authorizing an order forcing the continued pursuit of operations in these circumstances would be of doubtful validity. Consider the consequences of an attempt to punish as contempt a violation of such an order, and its fatal infirmity is revealed: the proprietor would be jailed or otherwise penalized for not reopening a demised business reinstating employees.

Of course, the right of discontinuance which we here uphold, means an actual, unfeigned and permanent end of operations—not a removal, nor subcontract, nor a change

merely in the form of the corporate entity. No ruse or subterfuge is suggested here. Darlington's was an absolute desistence, not a temporary intermission as apparently was contemplated in NLRB v. Norma Mining Corp., 206 F. 2d 38 (4 Cir. 1953). There was no provisional lockout, the mill was not transplanted elsewhere, and its sale was concededly entire, bona fide and irrevocable. The Trial Examiner demonstrated beyond debate that Darlington was not a "runaway" plant—that is, a plant having another existence in another form—finding that Darlington was not hidden among the other Milliken corporations. No disagreement with this finding was, or on substantial evidence could have been, expressed by the Board.

"There is no decided case", the Board candidly states, "directly dispositive of Darlington's claim that it had an absolute right to close its mill, irrespective of motive". While a number of the decisions on the point mention the presence of a legitimate economic reason in connection with the right to close, an analysis of them discloses that they do not declare the existence of such a reason to be indispensable to the validity of the closing. See, *e.g.*, NLRB v. Preston Feed Corp., 309 F. 2d 346, 352 (4 Cir. 1962); NLRB v. New England Web, Inc., 309 F. 2d 696, 700 (1 Cir. 1962); NLRB v. Rapid Bindery, Inc., 293 F. 2d 170, 175 (2 Cir. 1961); Union Drawn Steel Co. v. NLRB, 109 F. 2d 587, 592 (3 Cir. 1940). Nor are they precedents for the proposition that an owner or operator cannot go out of business at his option if the closure is intended to be, and is in truth, absolute and permanent. These authorities, we think, support the view that if the termination is with-

out intent to resume the business elsewhere—as a runaway —the power to close, even if spurred by unionization, is not precluded by the Act.

The right is implicitly recognized in Southport Petroleum Co. v. NLRB, 315 U. S. 100, 106 (1942), with Justice Jackson saying, "Whether there was a *bona fide* discontinuance and a true change of ownership—*which would terminate the duty of reinstatement*" was a question of fact determinable by the Board or the Court on contempt proceedings. [Accent added.] Bona fide does not mean exclusively an economic ground, but as well that the termination was, as here, not merely a gesture but an actuality.

Lower courts have long given explicit sanction to the right of discontinuance. Over 20 years ago the Fifth Circuit said in NLRB v. Tupelo Garment Co., 122 F. 2d 603, 606 (5 Cir. 1941):

> "The stockholders of Tupelo Garment Co. [the employer] had the absolute right to dissolve their corporation and the Board was without authority to prevent this."

Recently, the Sixth Circuit put it this way in NLRB v. R. C. Mahon Co., 269 F. 2d 44, 47 (6 Cir. 1959):

> "We find nothing in the National Labor Relations Act which forbids a company, in line with its plans for operation, to eliminate some division of its work. As held in National Labor Relations Board v. Adkins Transfer Company, Inc., supra, [226 F. 2d 324] an employer faced with the practical choice, either of paying enhanced wage rates demanded by a union or of discontinuing a department of its business, is entitled to discontinue."

Other courts have spoken in like manner and as emphatically, *e.g.*, NLRB v. New England Web, Inc., *supra*, 309 F. 2d 696, 700; Jays Foods, Inc. v. NLRB, 292 F. 2d 317, 320 (7 Cir. 1961); NLRB v. New Madrid Mfg. Co., 215 F. 2d 908, 914 (8 Cir. 1954); NLRB v. Caroline Mills, Inc., 167 F. 2d 212, 214 (5 Cir. 1948); Atlas Underwear Co. v. NLRB, 116 F. 2d 1020, 1023 (6 Cir. 1941).

To be sure, there are decisions adjudging the employer liable even upon an absolute disposition of all or a part of the business equipment: NLRB v. Kelly & Picerne, Inc., 298 F. 2d 895 (1 Cir. 1962); NLRB v. Missouri Transit Co., 250 F. 2d 261 (8 Cir. 1957); NLRB v. Bank of America, 130 F. 2d 624 (9 Cir.), *cert. denied*, 318 U. S. 791 (1942). Upon examination, however, it will be observed that these cases did not involve the extinguishment altogether of the business and the end of further participation by the employer in his former sphere. The predominant element of the principle we maintain is that the business is no longer extant and the owner has forfeited the penalty for withdrawing, that is, he has foregone the privilege of further pursuit of his business.

II. The doctrine of single employer, heretofore noted, was used by the Board to project Darlington's liability, as determined by the Board, upon Milliken. See NLRB v. Gibraltar Industries, Inc., 307 F. 2d 428, 431 (4 Cir. 1962), *cert. denied*, 372 U. S. 911 (1963); NLRB v. Deena Artware, Inc., 361 U. S. 398 (1960). Our decision that Darlington is without liability, of course, bars such expansion of responsibility. Furthermore, even if Darlington was a division of Milliken, the transfer of Darlington's liability

to Milliken upon the single employer principle is precluded because, as we have stated, a part, like the whole, of a business may be abolished when the extinction is consummated in circumstances like the present.

III. In its petition the Union asked us to enlarge the Board's order to include Roger Milliken individually in the orders of restoration of wages entered by the Board. This prayer like the further prayer of the Union that Darlington be required to reopen its plant is, obviously, denied by our acquittal of Darlington of liability.

The Board sustained the Trial Examiner in finding that Darlington had violated §8(a)(1) in pre- and post-election statements and urging a repudiation of the Union. Likewise §8(a)(5)—wherein refusal to bargain is made an unfair practice—was found contravened by Darlington. Remedies for these offenses are not now available as Darlington is no longer alive.

Power to command an employer to stay in business indefinitely, or assess him with damages for permanently going out of business, is not a National Labor Relations Board prerogative. Assumed by the Board in these cases, it is denied here.

Enforcement of Orders Denied.

Appendix A

J. SPENCER BELL, Circuit Judge, dissenting:

If I read the majority opinion correctly it stands for the proposition that an employer may cease business in whole or in part for any reason, including anti-union bias, so long as such cessation is actual, unfeigned and permanent. It also holds that having ceased business and thereby terminated the employer-employee relationship, an employer may not be held liable under the National Labor Relations Act for any violations committed prior to his cessation of business. Since, in the opinion of the majority, an employer may cease business in part for any reason, including anti-union bias, they do not reach the question presented by the Board's finding that Deering Milliken[1] constituted a single employer of which Darlington was a part.

In my opinion the question presented to this court is whether an employer commits an unfair labor practice when he closes down a part of his business in order to discourage the practice and procedure of collective bargaining and to retaliate against his employees for exercising their freedom of self organization under the National Labor Relations Act. Not only does such conduct violate the basic policies embodied in the Act; it is literally within the proscription of Section 8(a)(3). Furthermore, it has been held to be an unfair labor practice by prior decisions of this and other Circuits, and I am unable to read the cases cited

[1] Throughout this opinion Deering Milliken is used to refer to the entire complex of 27 manufacturing corporations and the affiliated service corporations unless it is clear from the context that the reference is to the factoring and sales agency, Deering Milliken and Company, Inc., later merged into Cotwool Manufacturing Corp. and then called Deering Milliken, Inc.

by the majority in support of its opinion as holding to the contrary.

Single Employer Status

The Board found that there was a sufficient degree of common ownership and control of labor relations and operations among Darlington, Deering Milliken, and its affiliated corporations to hold that these entities were in reality a single employer under the National Labor Relations Act.

As this court held in *NLRB* v. *Gibraltar Industries, Inc.*, 307 F. 2d 428, 431 (4 Cir. 1962), *cert. denied*, 372 U. S. 911 (1963), a Board determination that two or more economic entities constitute a single employer is entitled to judicial approval if "there is substantial evidence in the record to support the Board's conclusion and order". The court in review, moreover, may not "displace the Board's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo*". *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474, 488 (1951). I am convinced, upon review of the record as a whole, that there was an abundance of evidence to support the Board's position that Darlington, Deering Milliken and its affiliates constituted a single employer for purposes of the Act.

The record reveals that Darlington at the time when it ceased operations was one of seventeen corporations in the Deering Milliken complex owning and operating twenty-seven manufacturing plants scattered throughout the Eastern Seaboard. Deering Milliken performed the dual function of selling goods produced by each of these

manufacturing corporations and factoring their accounts receivable[2].

The head of Deering Milliken's Tax Department, C. W. Kable, Jr., was an officer of each of the seventeen manufacturing corporations. His Department prepared all federal and state tax returns of the manufacturing corporations and advised them on a wide variety of tax benefits to be derived through following the Department's suggestions in such matters as accounting procedures, vacation plans, and incentive compensation contracts for supervisors. The Tax Department also advised the various manufacturing corporations in the proper drafting of minutes of directors' and stockholders' meetings.

The Deering Milliken Insurance Department handled all insurance for the various plants. The manufacturing corporations purchased standard forms of insurance through the Insurance Department, with policies running to each of them. Fire insurance and workmen's compensation insurance, however, were purchased under a policy covering all the plants, Significantly, Deering Milliken paid premiums on an executive air insurance policy covering both Deering Milliken executives and key manufacturing personnel, along with executives of Deering Milliken Service Corporation and Deering Milliken Research Corporation.

The Deering Milliken Service Corporation, a wholly owned subsidiary of the seventeen manufacturing corpora-

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[2] Each mill corporation was charged a fee for services rendered. The service charges made were substantially less than those which would have been made by independent selling and factoring agents. Also of importance is the fact that Deering Milliken had no other non-Milliken affiliated mills as clients.

tions, was organized in 1951 for the stated purpose of providing "essential services to organizations in the textile industry at the lowest possible cost". These services were restricted, almost exclusively, to those corporations in the Deering Milliken chain. Various departments of Deering Milliken Service purchased all machinery, equipment, and cotton for the manufacturing plants. Research was conducted in the area of product improvement and studies were regularly made in connection with production problems common to several or all of the plants. Based on its findings, Deering Milliken Service made recommendations to the various manufacturing corporations with a view toward obtaining maximum efficiency from raw materials, equipment, and personnel. These recommendations directly affected the work loads and work speeds in the manufacturing plants, a critical area of labor relations.

The Placement Department of Deering Milliken Service conducted an annual recruitment program among college students, seeking to attract supervisory personnel for each of the manufacturing corporations. The prospective management and technical trainees were encouraged to look upon the organization as a whole. The record reveals that after hiring there was considerable movement of supervisory personnel between corporations. For instance, approximately half of the supervisors who worked at Darlington between 1951 and 1956 were hired from other Deering Milliken corporations, as was Darlington's Mill Treasurer, James M. Oeland.

Supplementing the services carried on by Deering Milliken Service, Deering Milliken Research Corporation conducted surveys and inspections in the manufacturing plants

toward the goal of standardizing a preventative maintenance system common to all of the mills.

The record, in sum, reveals that the Deering Milliken complex was a thoroughly integrated, monolithic enterprise. The participating mills were able to call upon various service arms of the enterprise to effect optimum employment of men, material, and machinery. Sales were made and factored through a common agency. Management personnel was jointly recruited and transfers freely made from one corporation to another. Moreover, descriptive literature and advertising published by Deering Milliken on behalf of the manufacturing corporations repeatedly emphasized the generic brand name of Milliken rather than individual corporate brand names.

After the alleged unfair labor practices which formed the subject matter of the present controversy, Deering Milliken & Co., Inc., in 1960 merged into the Cotwool Manufacturing Corp. to form Deering Milliken, Inc., and several of Cotwool's former subsidiaries were then liquidated into Deering Milliken, Inc. I find the merger of more than passing interest. To me it indicates that the separate corporate entities of the Deering Milliken complex were largely paper corporations which could be shifted and changed at the convenience of the Milliken family. This is highlighted by the fact that the various liquidations and mergers had no substantial effect on the actual functioning of the various entities within the Deering Milliken enterprise. Minot Milliken, Vice President of Deering Milliken, Inc., himself testified that nothing "of substance" was changed as a result of the merger. I think the ease with which this corporate change was made in 1960 strongly indi-

cates that the Deering Milliken complex in 1956 at the time of Darlington's dissolution was a single employer in which "corporate forms [were] largely paper arrangements that [did] not reflect the business realities". *NLRB* v. *Deena Artware, Inc.*, 361 U. S. 398, 403 (1960). The critical question becomes, therefore, did the Board have substantial evidence upon which to base its conclusion that there was a degree of common control and ownership existing in this unified industrial complex to warrant finding a single employer?

As pointed out in the majority opinion, Deering Milliken's capital stock was owned in majority amount by the members of the Milliken family. In addition they owned controlling stock in Darlington and in all of the other manufacturing corporations. These mill corporations, in turn, owned all the shares of Deering Milliken Service Corporation, and, along with Deering Milliken & Co., Inc., all the shares in Deering Milliken Research Corporation. The stock ownership was used by the Milliken family to place members of the Milliken family in the postion of corporate officers and board directors of the various corporations. Roger Milliken was President of Deering Milliken and President also of all the manufacturing corporations except Laurens (where he was Vice President and on the Board of Directors). A majority of the directors of all the manufacturing corporations except one (Hartsville) were members of the Milliken family. Deering Milliken doesn't seriously deny that the Milliken family's stock ownership permitted the family, and more specifically Roger Milliken, to exercise dominion and control over all phases of business and labor relations at each mill and over each and every corpo-

rate entity in the entire complex, but rather, it strongly denies that such control was actually exercised.

The Board found that through majority stock ownership and interlocking directories, the Milliken family (especially in the person of Roger Milliken) was able to and did exercise actual control in the area of labor relations. As stated by the Board:

> "Roger Milliken, the president of all of the corporations save one, exercised ultimate control over the labor relations of all of the corporations. Thus he received reports from each of the mills as to progress in reducing the number of jobs, the pay raises given, hours worked and job assignments, was asked for approval of various personnel actions, and made suggestions as to the hiring of personnel. More important, however, was Roger Milliken's participation in the area having the greatest impact on labor relations—the area of collective bargaining. Thus he circulated a memorandum and editorial which was obviously intended as a primer for the managers of the mills in combatting union organization. During the organizational campaign his pervasive influence was demonstrated by the statements of supervisory employees that Roger Milliken would close the plant rather than permit its unionization."

The Board does not suggest that Roger Milliken actually engaged in the day to day direction of labor relations at each of the plants. The day to day details inevitably had to be left to the resident chief executive officers, the Mill Treasurers. Everything other than over-all direction and guidance as to company policy of labor relations would, of necessity, have to be exercised by subordinates. Indeed it

seems remarkable that Roger Milliken had the time, in view of his far flung interests and responsibilities, to keep informed about labor relations in the individual mills and to make the detailed suggestions as to many facets of labor relations that the record reveals he did. The record is replete with suggestions and recommendations by Roger Milliken to the Mill Treasurers o ways to improve production and reduce jobs. For instance, Roger Milliken on different occasions proposed that each piece of machinery be tagged with its cost to discourage misuse, that closed circuit television be utilized to eliminate certain jobs, that machinery be rearranged to reduce the operator's walking distance. that the time which employees spent smoking be limited, and that beverage dispensing machines for employee use be installed. These suggestions were usually made in reference to "our" mills. These and other suggestions were not always followed, but they unmistakably indicate that Roger Milliken kept himself constantly informed as to what was occurring and didn't hesitate to suggest improvements.

Proof of Roger Milliken's ultimate and uncontradicted control over major policies affecting labor relations was illustrated by his decision, with approval of his family, to close the Darlintgon plant because of the employees' decision to be represented by a union.

After the union had won the Board supervised election of September 6, 1956, Darlington Mill Treasurer Oeland and Darlington attorney Poag telephoned Roger Milliken to advise him of the union's victory. One day later, Roger Milliken decided to close down the mill. Roger Milliken informed three members of his family, who were on the

Darlington Board of Directors, of his intention to close the mill, he did not inform Mill-Treasurer Oeland. On September 12, the Board met and unanimously passed a resolution to close the mill. This resolution was acted upon at a shareholders' meeting of October 17 and passed by a large majority, with only a few shareholders who were residents of the Town of Darlington voting against liquidation. Immediately after the shareholders' meeting, Roger Milliken was informed by South Carolina State Senator Mozingo, a resident of the Town of Darlington, the 83% of the mill employees had signed a petition to go back to work. Roger Milliken's reply was: "As long as there are 17% of the hard core crowd here I refuse to run the mill".

Thus I find in the record overwhelming evidence to support the Board's holding:

> "[W]e conclude that Deering Milliken, primarily through the person of Roger Milliken, exercised control over the labor relations of all the corporations, including Darlington. Although the details of day-to-day personnel relations may have been, of necessity, conducted at the mills, it is manifest that the major decisions were exclusively in the hands of Roger Milliken. Under such circumstances it is clear that Deering-Milliken must assume responsibility for control of Darlington's labor relations."

Deering Milliken's brief contends that the Board had no basis to find that Roger Milliken was not acting solely in his capacity as President of Darlington Mills. The evidence, however, points to the fact that Roger Milliken retained ultimate control over the whole Milliken complex and acted as its chief executive officer, without delineating

his various capacities. The Darlington Mill was but a small unit in a vast industrial empire employing more than 19,000 persons owned and controlled directly or indirectly by the Milliken family. Its closure was intended to be and was a grim deterrent to the thousands of employees in the affiliated plants who might entertain similar notions of unionization. Such conduct was properly considered by the Board to fasten responsibility of his actions for unfair labor practices upon the entire complex.

Closing Mill Unfair Labor Practice

Having found that the Board had ample evidence to conclude that the Milliken complex was a single employer under the NLRA, the next question to consider is whether under the decided cases, the act of Deering Milliken in shutting down the Darlington plant was an unfair labor practice, cognizable under Section 8(a)(3).

That the plant closure was the direct result of the organizational activities of the employees is too well documented by the record to require extended discussion. Roger Milliken himself gave that reason to his stockholders for his decision to close the mill. On approximately thirty separate occasions, supervisory personnel threatened the employees with closure in case the union won, and attributed their prophesies to Roger Milliken's well publicized hostility to unions. Milliken himself circulated to all of his mills a trade magazine article pointing out that his attitude was so well known that liquidation was inevitable from the minute the election result was announced. Darlington's belated efforts to stress the economic factors are

belied by the prior history of the mill. In the nine months prior to the election, management had spent $400,000.00 in a modernization program which included not only new machinery but additions to plant structure. A belief that union wage demands and bargaining attitudes towards work loads may make future operations unprofitable does not constitute an economic reason which would excuse the respondent's conduct in this case. The Board found upon abundant evidence that the respondent's conduct was discriminatorily motivated.

> "Conduct which on its face appears to serve legitimate business ends in these cases is wholly impeached by the showing of an intent to encroach on protected rights. The employer's claim of legitimacy is thereby totally dispelled. [Citing cases].
>
> ". . . 'The ultimate problem is the balancing of conflicting legitimate interests. The function of striking that balance to effectuate national labor policy is often a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board, subject to limited judicial review. Labor Board v. Truck Drivers Union, 353 U. S. 87, 96'." *National Labor Relations Board* v. *Erie Resistor Corporation, et al.*, 31 U. S. L. W. 4407, 4409, 4411 (U. S. May 13, 1963).

This court has held, in unison with other Circuits, that an employer may neither temporarily shut down operations to avoid bargaining with a union, *NLRB* v. *Norma Mining Corp.*, 206 F. 2d 38 (4 Cir. 1953), nor may he subcontract out work to another employer formerly done by a division in his business for that purpose, *NLRB* v. *Preston Feed*

Corp., 309 F. 2d 346 (4 Cir. 1962). Moreover, other Courts of Appeals have held that an employer may not transfer work to another plant owned, directly or indirectly by the employer himself, to avoid bargaining. See e.g., *NLRB* v. *United States Air Conditioning Corp.*, 302 F. 2d 280 (1 Cir. 1962); *NLRB* v. *Winchester Electronics, Inc.*, 295 F. 2d 288 (2 Cir. 1961); *NLRB* v. *Lexington Electric Products Co.*, 283 F. 2d 54 (3 Cir. 1960); *cert. denied*, 365 U. S. 845 (1961); *Butler Bros.* v. *NLRB*, 134 F. 2d 981 (7 Cir. 1943). I fail to see any distinction in principle between such conduct and that of the Respondent here.

More to the point, I consider the decision of this court in *NLRB* v. *Preston Feed Corporation*, 309 F. 2d 346 (4 Cir. 1962) as controlling on the legal issue here. In that case the Board sought enforcement of its order requiring the employer to reinstate its trucking operations which the Board found had been closed down in order to discourage unionization among its employees. This court enforced the order, pointing out that although the employer had decided for valid economic reasons to close the operation in the future, its sudden and precipitate closure was to discourage unionization and, therefore, constituted an unfair labor practice which could be remedied by requiring reopening until the employer could vindicate its closing for economic reasons. Judge Soper, speaking for a unanimous court, recognized the employer's right to close for valid economic reasons:

> "The question has been considered in a number of cases in which the Board, in order to effectuate the

purposes of the Act, has thought it desirable to require an employer to continue a certain business operation or department which he desired to abandon. In these cases it has been uniformly held that the Board is without power to interfere with management *where the discontinuance of a part of the business is prompted by legitimate business motives and not in order to frustrate the purposes of the Act or interfere with employees in the exercise of rights conferred upon them by the statute.* (Citing cases) (Emphasis added.).

"In the instant case, as we have seen, the initial decision of the Company to close its trucking department was based on economic reasons and not on hostility to the union, but the immediate decision and the prompt closing of the department on March 6th, when it was discovered that the employees led by the union were insisting upon their rights under the statute, was impelled by the intent to restrain the employees in their rights to collective bargaining. We shall, accordingly, enter a decree that the order of the Board in these and other particulars be enforced. . . ." 309 F. 2d 352.

It is apparent that the Board's order in this case is within the rationale of this Court's judgment in the *Preston* case. See also *NLRB* v. *Norma Mining Corp.*, 206 F. 2d 38 (4 Cir. 1953), where this court through Judge Dobie, speaking for a unanimous court, enforced the order of the Board requiring an operating lessee to reopen a mine closed by the employer in violation of Section 8(a)(1) and (3) of the Act.

Again, the Eighth Circuit in *NLRB* v. *Missouri Transit Co.*, 250 F. 2d 261 (8 Cir. 1957) faced a situation closely analogous to the one we have here. The Board's finding of an unfair labor practice and the relief granted by the Board and enforced by the court support the Board in this case. The Missouri Transit Company was a common carrier of passengers by bus for hire engaged in two operations: one a short-line intrastate shuttle bus operation between Waynesville, Missouri, and Fort Leonard Wood, Missouri; the other a long-line interstate bus operation between Fort Leonard Wood and Cedar Rapids, Iowa. As a result of union attempts to organize the shuttle-line bus drivers, the company sold all the equipment used in the operation of the shuttle route to a competitor. This action resulted in the discontinuance by the company of the shuttle-line route and service, and terminated the employment of all shuttle-line bus drivers. Upon the filing of an unfair labor practice against the company, the Board found that the company had disposed of the shuttle-line route and equipment used in operating it, and had discharged the shuttle-line drivers, for discriminatory reasons, in violation of Sections 8(a)(3) and (1) of the Act. In granting affirmative relief, the Board ordered that the company place the discharged drivers on a preferential hiring list for priority consideration for jobs in the long-line operations and that the company pay back wages to these individuals from the date that the shuttle-line bus operations were closed to the date when they were either reinstated or placed on a preferential hiring list.

The company contended that the Board was powerless either to order back pay beyond the time when the shuttle-line bus operation ceased or to order reinstatement in a completely separate and independent division of the company. The Eighth Circuit rejected the Company's contentions and ordered enforcement of the Board's order in full. I think the logic of the *Missouri Transit* case compelling and the application of the principles announced clearly appropriate to case here being considered.

In *NLRB* v. *Wallick*, 198 F. 2d 477 (3 Cir. 1952), that court sustained a Board order requiring a respondent partnership which operated several enterprises engaged in the manufacture of ladies' garments to either reopen a plant which it had closed in violation of the Act because its employees had organized or give its employees an opportunity to work in other plants operated by the partnership. This was true even though the closed plant was owned by a separate corporation the stock of which was owned by the individual partners. See also *A. M. Andrews Co. of Oregon* v. *NLRB*, 236 F. 2d 44 (9 Cir. 1956).

In the present case, even absent single-stockholder status, the employees had a remedy. After the Darlington stockholders on October 17, 1956, had adopted the recommendations of the Board of Directors to liquidate the Darlington Mill, employees were discharged in separate groups over the intervening period until the plant closed on November 24. Yet, pursuant to the laws of South Carolina, the corporation continued to exist for the purpose of liquidating its assets and settling its liabilities. If, as the Board found, amply supported by the record as a whole, these discharges were for discriminatory reasons

under Section 8(a)(3), relating to the employees' "tenure of employment", then at a very minimum the amounts realized from the sale of Darlington machinery and equipment should be allocated to reimbursing the discharged employees for lost wages from the time of their discharge until the liquidation of the corporation had been completed. It is obvious that if one or two, or even a majority of employees had been discharged for their activities on behalf of the union, then the court would uphold a Board finding of an 8(a)(3) violation. It seems tortuous logic to say, therefore, that because the company discharged without distinction both the employees who voted against the union (but who were discharged nonetheless because a majority of the employees elected to be represented by a union), the company is absolved from liability under the Act.

But beyond this remedy I think the Board was justified in ordering Deering Milliken to provide back pay until the discharged employees were able to obtain substantially equivalent employment. The record reveals that a large number of Darlington supervisory personnel was absorbed into the Deering Milliken complex. Late in September 1956, the Deering Milliken Industrial Engineering Department sought and obtained from Darlington Mill Treasurer Oeland a list of Darlington Supervisory personnel who might be "useful" to it. All of these men were interviewed by the Department. Plans were made to have all supervisory personnel of the Darlington Mill transferred to the Department's payroll for a three month period after their separation from Darlington. The purpose of this arrangement was to provide a period of time within which

these men could be "picked up" by other Deering Milliken Mills. Some of these supervisors were actually picked up, going directly on the payroll of other mills without an interval on the payroll of the Department. Others were transferred to other parts of the Deering Milliken organization. Although some supervisors ceased their affiliation with Deering Milliken entirely, they were given time off, with pay, in which to seek new employment opportunities. One of these men was Mill Treasurer Oeland, who remained on the Darlington payroll until July, 1957, some seven months after mill machinery and equipment had been sold. In addition, a few supervisors received bonus payments after the Darlington closing in appreciation of their efforts during the union crisis. Thus, even though the Deering Milliken complex disclaims any responsibilities after the Darlington closing for those whom it regards as its enemies, it managed to reward and find places for those whom it regarded as its friends. I see nothing to prevent enforcing the Board's order which would also require Deering Milliken to offer substantially equivalent employment to non-supervisory personnel who were equally adversely affected by the mill's closing.

I am not unmindful of the Board's findings that Darlington committed other violations in addition to the 8(a)(3) here discussed, specifically 8(a)(1) and 8(a)(5). The repeated threats of members of management that the mill would be shut down if the union won the representation election constituted a classic form of interference, restraint, and coercion proscribed by Section 8(a)(1). Section 8(a)(1) was also violated by management threats to blacklist union adherents, their interrogation of employees regard-

ing their union activity, and their support of a petition disavowing the union after the announced intention of Roger Milliken to close the mill upon learning of the union victory.

The Board also found that the failure of the Company to bargain with the union with respect to the tenure of employment of the employees in the Darlington Mill and to furnish the union with wage and related bargaining data constituted an unfair labor practice under Sections 8(a)(5) and (1). I am convinced that the record as a whole amply supports the Board's findings, but do not feel that an extended discussion of these violations is warranted here.

APPENDIX B

National Labor Relations Act

Sec. 2

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

Appendix B

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; . . .

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made [and

has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 9(f), (g), (h)], and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; . . .

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

Sec. 10 (c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such un-

fair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or

examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
A. The Board's findings of fact	3
1. The relation between Deering Milliken and Darlington	3
2. The unfair labor practices	4
B. The Board's conclusions and order	8
C. The decision of the court of appeals	10
Reasons for granting the writ	11
Conclusion	18
Appendix A	19
Appendix B	48
Appendix C	50

CITATIONS

Cases:

A. M. Andrews Company of Oregon v. *National Labor Relations Board*, 236 F. 2d 44	12
Barbers Iron Foundry, 126 NLRB 30	17
Bonnie Lass Knitting Mills, 126 NLRB 1396	17
Butler Bros. v. *National Labor Relations Board*, 134 F. 2d 981, certiorari denied, 320 U.S. 789	12
Deering Milliken, Inc. v. *Johnston*, 295 F. 2d 856	8
Fibreboard Paper Products Corp. v. *National Labor Relations Board*, 322 F. 2d 411, certiorari granted, 375 U.S. 963	13

Cases—Continued

	Page
J. M. Lassing, et al., 126 NLRB 1041, enforcement denied, 284 F. 2d 781, certiorari denied, 366 U.S. 909	17
National Labor Relations Board v. *Adams Dairy, Inc.*, 322 F. 2d 553, pending on certiorari, No. 741, this term	13
National Labor Relations Board v. *Brown-Dunkin Company*, 287 F. 2d 17	12
National Labor Relations Board v. *Stremel*, 141 F. 2d 317	12
National Labor Relations Board v. *E. C. Brown Co.*, 184 F. 2d 829	12
National Labor Relations Board v. *Exchange Parts Co.*, 375 U.S. 405	12
National Labor Relations Board v. *Fruehauf Trailer Co.*, 301 U.S. 49	12
National Labor Relations Board v. *Hugh Major*, 296 F. 2d 466	13, 15
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1	12
National Labor Relations Board v. *Kelly & Picerne, Inc.*, 298 F. 2d 895	12
National Labor Relations Board v. *Lexington Electric Products Corp.*, 283 F 2d 54, certiorari denied *sub nom. Local 3, International Brotherhood of Electrical Workers, AFL–CIO*, 365 U.S. 845	12
National Labor Relations Board v. *Missouri Transit Company*, 250 F. 2d 261	15
National Labor Relations Board v. *Preston Feed Corp.*, 309 F. 2d 346	13

Cases—Continued

National Labor Relations Board v. *Savoy Laundry, Inc.*, No. 28119 (C.A. 2), decided January 24, 1964, 55 LRRM 2285 ..... Page 16

National Labor Relations Board v. *Tak Trak, Inc.*, 293 F. 2d 270 12

National Labor Relations Board v. *United States Air Conditioning Corporation*, 302 F. 2d 280 12

National Labor Relations Board v. *Wallick*, 198 F. 2d 477 15

National Labor Relations Board v. *Winchester Electronics*, 295 F. 2d 288 12

Schnell Tool & Die Corp., 144 NLRB No. 52 17

Star Baby Co., 140 NLRB 678, pending on petition for enforcement (C.A. 2), No. 28626 17

St. Cloud Foundry & Machine Co., 130 NLRB 911, enforced, 295 F. 2d 511 17

Town & Country Manufacturing Company v. *National Labor Relations Board*, 316 F. 2d 846 13

Yoseph Bag Co., 128 NLRB 211, remanded *sub nom. District 65, Retail, Wholesale and Department Store Union* v. *National Labor Relations Board*, 294 F. 2d 364, original decision adhered to, 139 NLRB 1310 17

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. Secs. 151, *et seq.*):

Section 7 48

Section 8(a)(1) 8, 10, 11, 15, 48

Section 8(a)(3) 8, 11, 15, 48

Section 8(a)(5) 8, 10, 11, 48

Section 9(a) 48

Section 10(c) 15, 49

Miscellaneous:

Note, *Business Liquidation as an Unfair Labor Practice*, 48 Cornell L.Q. 572 (1963)..... Page 17

Note, *Management Rights—Employer Does Not Have Absolute Right To Go Out Of Business Where Desire To Avoid Dealing With Union Is Present*, 49 Va. L. Rev. 616 (1963)..... 17

Note, *NLRB Orders Pay From Discharge Until Employees Find Substantially Equivalent Work To Remedy Anti-Union Mill Shutdown*, 111 U. Pa. L. Rev. 672, 673 (1963).. 17

Note, *Permanent Closing Of A Business Due To Employees' Union Activities Constitutes An Unfair Labor Practice Entitling Discharged Employees To Back Pay Until The Obtainment Of Substantially Similar Employment*, 51 Georgetown L.J. 633 (1963).. 17

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DARLINGTON MANUFACTURING COMPANY; DEERING MILLIKEN, INC.; DEERING, MILLIKEN AND COMPANY; AND TEXTILE WORKERS UNION OF AMERICA, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the *en banc* decision of the Court of Appeals for the Fourth Circuit entered in this case on November 15, 1963.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 19–46) is reported at 325 F. 2d 682. The findings of fact, conclusions of law and order of the Board (J.A. 1–246)[1] are reported at 139 NLRB 241.

[1] "J.A." refers to the joint appendix filed in the court of appeals. References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

JURISDICTION

The decision of the court of appeals was rendered on November 15, 1963, and a decree was entered on November 19, 1963 (App. A, *infra*, pp. 46–47). On February 13, 1964, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including February 28, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) and (f) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether an employer who owns several plants violates the National Labor Relations Act when he permanently discontinues operations in one of the plants and discharges its employees, in order to avoid bargaining with the union freely designated by its employees as their representative and to retaliate against the employees for their union activities.[2]

2. Should the government prevail on the basic issue, respondents may raise the further question whether the Board has power to order that the discharged employees be employed or placed on a preferential list for hiring at the other plants, and that they be given back pay from the date of discharge until the employees are

[2] The phrasing of the question assumes that the Milliken complex is to be treated as a single employer with several plants for purposes of the Act. That was the finding of the Board, which the dissenting judges below thought amply supported by the record and which the majority of the court of appeals accepted "*arguendo*" (*infra*, pp. 25, 29, 31–39). Because we believe the finding is plainly correct, we do not hesitate to ask this Court to indulge the same assumption in deciding the case.

reemployed or placed upon the preferential list or they obtain substantially equivalent employment elsewhere.[3]

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. Secs. 151, *et seq.*), are set forth in Appendix B, *infra*, pp. 48–49.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

1. THE RELATION BETWEEN DEERING MILLIKEN AND DARLINGTON

Darlington Manufacturing Company, at the time of its cessation of operations in December 1956, was found to be one of 17 corporations operating textile mills commonly owned and controlled by the Milliken family. Deering Milliken and Company, also owned and controlled by the Milliken family, acted as exclusive sales agent and factor for all of the mills (J.A. 110–111). The Darlington plant was located in Darlington, South Carolina (J.A. 51). It manufactured cotton print cloths, as did three of the other mills in the Milliken complex (J.A. 25; 514–520, 522, 933, 935–936, 938–939, 941, 943–945). The Milliken family owned a majority of the stock in Deering Milliken and Company and Cotwool Manufacturing Company (one of the seventeen corporations); and, through direct stock ownership and these two companies, they

[3] If the first question is answered in the negative, there would remain a further question whether the Board order should be enforced insofar as it is premised on unfair labor practices committed by the employer before closing the plant. We do not, however, suggest that that question presents an issue of sufficient importance to require resolution by this Court.

owned more than 66 percent of Darlington's stock (J.A. 23–24, 213; 236–237, 1292–1300, 1308–1311).[4] Roger Milliken was president of Darlington, of Deering Milliken, and of all of the other mill corporations except one (where he was vice-president) (J.A. 24; 1322); and a majority of the directors of all of the mill corporations except one (Hartsville) were members of the Milliken family (J.A. 24; 520–521, 1322, 1351). Roger Milliken exercised ultimate control over the labor relations of all of the corporations. He received reports from each of the mills as to progress made in reducing the number of jobs, the pay raises given, hours worked, and job assignments; he made suggestions as to the hiring of personnel and approved other personnel actions; and, as shown more fully *infra*, pp. 4–7, he directed a campaign against unionization. (J.A. 24–25; 1013–1020, 1072–1073, 1086–1089, 1274, 1679–1681, 1694–1699, 1711–1717, 1730–1731, 1735, 1740, 1748–1753, 1757–1811, 1824–1859).

2. THE UNFAIR LABOR PRACTICES

In March 1956, Textile Workers Union of America began an organizing campaign among the employees in the Darlington mill, and thereafter petitioned the Board for a representation election (J.A. 4, 52). Supervisory personnel threatened, on numerous oc-

[4] In 1960, after the commission of the unfair labor practices herein, Deering Milliken and Company and Cotwool merged and formed Deering Milliken, Inc.; in the process, several of Cotwool's former subsidiaries were absorbed into Deering Milliken, Inc. (J.A. 1322, 1872–1873). The Board's order thus runs against both Deering, Milliken and Company, and Deering Milliken, Inc. (J.A. 27, n. 48).

casions, that Roger Milliken would close down the mill if the Union won the election, some of them adding that he had already done this at other mills in which he held an interest (J.A. 4, 6–7, 25; 325, 326–327, 344, 345–346, 350, 354–355, 361–363, 370; see also, J.A. 305, 308–309, 317, 319–320, 321–322, 356–357, 366, 384). The supervisors also told the employees that union adherents were going to be discharged and blacklisted, and they interrogated a number of employees about their union activity (J.A. 4, 6–7, 77; 303, 305, 313, 316, 317, 327, 334, 339, 345, 350, 354–356, 365, 376–377, 488–489, 490).

Notwithstanding the anti-union campaign, on September 6, 1956, the Union won a Board-directed election by a narrow margin (J.A. 4; 250–251). On the following day, Roger Milliken decided to recommend to the stockholders and directors that the mill be shut down, admittedly because a majority of the employees had voted for the Union (J.A. 4; 456–457, 464, 472, 476–477, 422–425, 263). On September 12, Darlington's seven-man board of directors, four of whom were officers of Deering Milliken, voted to liquidate the mill and to call a special stockholders' meeting to approve the proposal (J.A. 5; 279–280, 431, 1257–1261, 1290, 1322).

After being advised of this decision, Darlington's supervisors told the employees that Roger Milliken had decided to close the mill, because the Union had been designated as the employees' representative; and that they would be blacklisted for employment in other mills, including the other Deering Milliken

mills (J.A. 5, n. 10, 6; 314, 327, 351–353, 357, 359, 370; see also, J.A. 306, 309–311, 320, 344, 366–367, 374, 380, 482). One supervisor observed that "Roger Milliken knew that the Union had planned to organize the south and * * * were going to pick one of his mills and he has set a trap for them and they had walked in and took the very mill that Roger Milliken wanted them to take" (J.A. 5, n. 10, 6, 353). Meanwhile, members of management were encouraging employees to sign a petition disavowing the Union, in order to keep the mill open (J.A. 5, n. 10, 6; 381–383, 323–324, 337, 359–360, 368–369).

On October 17, Darlington's stockholders met to consider the board of directors' resolution to dissolve the corporation because of "certain developments" which Roger Milliken described to the stockholders as the Union's election victory (J.A. 5; 292, 1262–1265). An overwhelming majority of the stock was voted in favor of liquidation (J.A. 5; 438, 494–495, 1292, 1295, 1296–1300). Included among the stock voted for liquidation was the 41 percent of Darlington's shares owned by Deering Milliken and voted by Roger Milliken (J.A. 438, 494–495). After the stockholders' meeting, a State senator who had been present pointed out to Roger Milliken the serious effect of the shutdown on the City of Darlington, and stated that the decision was "unfair" because 83 percent of the employees had "signed a petition to go back to work" (J.A. 5; 266. p. 6, *supra*). Milliken replied, "As long as there was 17% of these hard core labor people here, I refuse to operate the mill" (J.A. 5; 268, 266).

By telegram dated October 25, the Union advised

Darlington that it had been certified by the Board, and urged a bargaining conference no later than October 30 in order to maintain mill operations and preserve employees' jobs (J.A. 1244, 253). Management delayed meeting until November 7, when it refused to discuss the Union's suggestions and declined to furnish it with information regarding the identity and termination dates of the employees who were currently being laid off in anticipation of the ultimate closing of the plant (J.A. 71; 254–257, 1246–1253).

On October 17, 1956, the Darlington board of directors authorized a partial liquidating dividend, of which Deering Milliken received about $615,000 and Roger Milliken and his immediate family about $75,000 (J.A. 293, 437–438). Plant operations ceased altogether on November 24, 1956, and, on December 12 and 13, the plant was auctioned off piecemeal (J.A. 6; 258). Thereafter, several of Darlington's unfulfilled contracts were assumed by other Milliken mills and in some cases those mills increased their sales to Darlington's former customers, independently of the old contracts (J.A. 928, 933–967).

On November 14, 1956, Roger Milliken forwarded to the treasurers of a number of Deering Milliken mills, and to certain others connected with the Deering Milliken organization, a memorandum stating that the unions were "going to be making a tremendous drive all through this area, and there are few things that are more important to us than making sure that the leaders in your community understand and are sympathetic to what you are trying to do." Milliken urged a careful reading of a portion of a magazine

article, enclosed with the memorandum, which stated, in effect, that for many years Deering Milliken's policy had been to close down unionized mills (J.A. 25; 1677, 969).[5]

B. THE BOARD'S CONCLUSIONS AND ORDER

The Board found that Darlington violated Section 8(a)(1) by the threats, interrogation, and support of the anti-union petition; that the plant was shut down in order to discourage the employees' union activity and in order to avoid bargaining with the Union; and that Darlington violated Section 8(a)(5) by refusing to bargain with respect to the tenure of employment of the employees in the Darlington mill, and by refusing to furnish the Union with wage and related bargaining data (J.A. 6–9, 19).[6] The Board (with Member Rodgers dissenting) further found that the shutdown, since it was motivated by anti-union considerations, constituted a violation by

[5] The newspaper article and Milliken's covering memorandum were inadvertently omitted from the joint appendix. They are reprinted in Appendix C, *infra*, pp. 50–56.

[6] Though the original charges were filed by the Union in October, 1956, and the initial complaint was issued in December of the same year, the Board's final order was not entered until October 18, 1962. The chronology of this delay is fully recited in the Board's opinion (J.A. 1–3) and need not be repeated here. Suffice it to say that the matter was twice remanded to the trial examiner; that the final remand was contested in the courts by the respondents (see *Deering Milliken, Inc.* v. *Johnston*, 295 F. 2d 856 (C.A. 4)), and that the supplemental proceedings dealt primarily with the liability of Roger Milliken as an individual and the status of the Milliken complex as a single employer.

Darlington of Sections 8(a)(3), (1) and (5) (J.A. 9–18). Finally, the Board (with Members Leedom and Rodgers dissenting) found that there was a sufficient degree of common ownership and common control over labor relations and operations to render Darlington, Deering Milliken, and Deering Milliken's affiliated corporations (see pp. 3–4, *supra*) a single employer under the Act; hence, the Board held that all of the violations committed by Darlington were also attributable to Deering Milliken (J.A. 23, 27).

The Board's order (J.A. 30–33, 39–42), *inter alia*, requires Darlington and Deering Milliken to cease and desist from the unfair labor practices found; and, if operations are resumed in Darlington, South Carolina, to bargain with the Union as the employees' exclusive representative (J.A. 30–31). They are further directed to give the employees back pay for a period to terminate (if the Darlington plant does not reopen) when the employees obtain substantially equivalent employment, or are employed or placed on a preferential hiring list at other Deering Milliken mills (J.A. 21–23, 27–28, 31–32). Deering Milliken is required to offer the Darlington employees employment, or placement on a preferential hiring list, at other Deering Milliken mills in South Carolina or adjacent States; to pay the travel and moving expenses of the employees who accept the offer; and to bargain collectively with the Union for the purpose of reaching an agreement as to the operation of the preferential hiring lists, and as to the terms and conditions under which the former employees of the

Darlington mill may, if they desire, obtain such employment (J.A. 27–29, 32–33). Finally, Darlington and Deering Milliken are required to mail and publish appropriate notices directed to the Darlington employees (J.A. 32–33, 39–42).

C. THE DECISION OF THE COURT OF APPEALS

The court of appeals, which sat *en banc,* by a 3–2 vote denied enforcement of the Board's order. The court accepted *arguendo* for the purposes of its decision the Board's finding that the Darlington plant was shut down in order to discourage union membership and to avoid bargaining, and also its finding that Darlington and Deering Milliken were a single employer (Appendix A, *infra,* pp. 25–26, 29).[6a] The court concluded, however, that the decision to close the plant was not an unfair labor practice, reasoning that an employer has the "absolute prerogative" to "go out of business in toto, or to discontinue it in part, permanently at any time," even if this action is "spurred by unionization" (Appendix A, *infra,* pp. 26, 27). The court also refused to enforce those parts of the Board's order based on its findings that Darlington and Deering Milliken violated Sections 8(a) (1) and (5) of the Act prior to the shutdown, on the ground that "Remedies for these offenses are not now available as Darlington is no longer alive" Appendix A, *infra,* p. 30).

[6a] Since the court did not consider whether the finding was sustained by substantial evidence, the issue would appear to be open on remand. For the purposes of this petition we take the case on the assumption made by the court below.

The two dissenting judges (Judge Bell and Chief Judge Sobeloff) would have enforced the Board's order. In their view, "overwhelming" evidence supported the Board's finding that Darlington and Deering Milliken were a single employer; "abundant" evidence supported the Board's finding that the plant was shut down because of the employees' union activities and as a "grim deterrent to the thousands of employees in the [Deering Milliken] plants who might entertain similar notions of unionization"; in their view the shutdown of the Darlington mill was the equivalent of an employer's transferring or contracting out part of his operation in order to defeat a union, and violates Section 8(a)(3) of the Act. The dissenting judges also agreed, as the Board found, that the shutdown violated Sections 8(a) (1) and (5). (Appendix A, *infra*, pp. 30–46.)

REASONS FOR GRANTING THE WRIT

This case presents an important question under the National Labor Relations Act involving the right of an employer to shut down one of his plants for the purpose of avoiding bargaining with the union which the majority of the employees of that plant have selected, thus discouraging employees from seeking to bargain collectively at other mills. The decision of the sharply divided court of appeals sustaining the employer's right is, we believe, erroneous, and conflicts in principle with the decisions of two other circuits.

1. It is a settled principle that action taken by an employer which is permissible when taken for

normal business reasons becomes an unfair labor practice when the purpose is to discourage unionization or defeat collective bargaining. *National Labor Relations Board* v. *Exchange Parts Co.*, 375 U.S. 405. To discharge individual employees because of their union activity is a form of discrimination and restraint proscribed by Sections 8(a) (3) and (1) of the National Labor Relations Act.[7] So, also, it violates the Act to close a plant entirely and discharge all employees with a view to re-opening with non-union labor.[8] And, finally, the Act does not permit an employer to shut down one part of his operation, even permanently, and either transfer its work to other parts,[9] or contract it out to an independent entity,[10]

[7] See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U.S. 49.

[8] *National Labor Relations Board* v. *Tak Trak, Inc.*, 293 F. 2d 270 (C.A. 9). *National Labor Relations Board* v. *Stremel*, 141 F. 2d 317 (C.A. 10). *National Labor Relations Board* v. *E. C. Brown Co.*, 184 F. 2d 829 (C.A. 2), *Butler Bros.* v. *National Labor Relations Board*, 134 F. 2d 981, 985 (C.A. 7), certiorari denied, 320 U.S. 789. *National Labor Relations Board* v. *United States Air Conditioning Corporation*, 302 F. 2d 280 (C.A. 1) (only former nonunion employees taken on at new operation).

[9] *National Labor Relations Board* v. *Lexington Electric Products Corp.*, 283 F. 2d 54 (C.A. 3), certiorari denied *sub nom. Local 3, International Brotherhood of Electrical Workers, AFL-CIO*, 365 U.S. 845; *A. M. Andrews Company of Oregon* v. *National Labor Relations Board*, 236 F. 2d 44 (C.A. 9); *National Labor Relations Board* v. *Winchester Electronics*, 295 F. 2d 288 (C.A. 2).

[10] *National Labor Relations Board* v. *Brown-Dunkin Company*, 287 F. 2d 17 (C.A. 10); *National Labor Relations Board* v. *Kelly & Picerne, Inc.*, 298 F. 2d 895 (C.A. 1);

if his purpose is to discriminate against the union. The holding of the court below that an employer may discontinue part of his operation for anti-union reasons, so long as the discontinuance is "an actual, unfeigned and permanent end of operations—not a removal nor subcontract," is, in our view, contrary to these settled principles.

We do not suggest that the National Labor Relations Act raises any impediment to the right of an employer to go out of business, close a plant or curtail operations because he finds them unprofitable, or for any other business reason. Both the Act and our position are entirely consistent with full recognition of the privilege to make business decisions, including the decision to close a plant, for normal economic reasons.[11] Here the finding is that the employer closed the Darlington plant not for economic reasons,

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National Labor Relations Board v. *Hugh Major*, 296 F. 2d 466 (C.A. 7); *National Labor Relations Board* v. *Preston Feed Corp.*, 309 F. 2d 346 (C.A. 4); *Town & Country Manufacturing Company* v. *National Labor Relations Board*, 316 F. 2d 846 (C.A. 5).

[11] Since the closing here was found not motivated by economic reasons, there is no need to consider how far there is a duty to bargain concerning a projected curtailment of operations or the abandonment of a business for economic reasons. See *Fibreboard Paper Products Corp.* v. *National Labor Relations Board*, 322 F. 2d 411 (C.A.D.C.), certiorari granted, 375 U.S. 963; *National Labor Relations Board* v. *Adams Dairy, Inc.*, 322 F. 2d 553 (C.A. 8), petition for certiorari pending, No. 741, this Term. It might be held that where the employees have chosen a representative the employer may not make this decision until he has negotiated in good faith, but in any event, the duty to negotiate with the union is not a duty to agree.

but out of hostility toward the union which had just won recognition from the employees as their representative. Indeed, the record suggests that the employer, at the time, deliberately eschewed an economic justification for his action, preferring to make plain that the closing was motivated by anti-union bias. It is that conduct, calculated to prevent collective bargaining and discourage union organization, that we attack as unfair.

Nor does the instant case present the question whether an employer may go out of business altogether, abandoning all related operations, if his purpose is to avoid "unionization." For in reaching the decision below the court of appeals assumed the correctness of the Board's finding, fully supported by the evidence, that the Milliken complex was a single employer, operating some twenty-six textile mills other than the discontinued Darlington operation. Our argument here is premised on the fact that the closing of the Darlington plant was intended to serve as a dramatic warning to employees at other plants of the employer of the consequence of "going union." That is what makes the problem so acute. The full impact of the Darlington closing, and its avowed purpose, are accurately reflected in the contemporary magazine article that Roger Milliken thought proper to distribute to the management people in several mills of the family complex (Appendix C, p. 56):

> If the people of Darlington knew anything of the Deering, Milliken record they would know that the management does not intend an unprofitable division nor has it intended to share

the prerogatives of management with labor union leaders. This has been the case through three generations of Milliken operations. When the Madison Woolen Mills of Madison, Maine, became not only unprofitable but unionized, Mr. Gerrish Milliken liquidated it; although the Cowan and Farnsworth Mills in the State of Maine still operate and must, therefore, be profitable. When the Dallas Manufacturing Company of Huntsville, Alabama, became unionized, the Millikens liquidated it, contrary to the opinion of many local people that such would not be the case. We ourselves are small shareholders in Darlington and from experience and acquaintanceship, we knew the minute the union election vote was announced that we would receive a call for a special meeting to vote for liquidation.[12]

2. The holding of the court below that an employer does not violate the Act by permanently discontinuing part of his business to avoid bargaining with the union conflicts in principle with the decision of the

[12] We do not believe that argument on the propriety of the Board's remedy is warranted at the petition stage. However, we submit that the requirement that Deering Milliken offer the unlawfully discharged Darlington employees employment or placement on a preferential hiring list at its other plants, and give them back pay until such time as this offer is made or the employees obtain substantially equivalent employment elsewhere is, as the dissenting judges concluded (Appendix A, *infra*, pp. 40–45), a reasonable means of redressing the unfair labor practices found and well within the Board's broad remedial power under Section 10(c) of the Act. See *National Labor Relations Board* v. *Missouri Transit Company*, 250 F. 2d 261, 263–265 (C.A. 8); *National Labor Relations Board* v. *Wallick*, 198 F. 2d 477, 482 (C.A. 3); *National Labor Relations Board* v. *Hugh Major*, 296 F. 2d 466, 467–468 (C.A. 7).

Eight Circuit in *National Labor Relations Board* v. *Missouri Transit Company*, 250 F. 2d 261, and the decision of the Second Circuit in *National Labor Relations Board* v. *Savoy Laundry, Inc.*, No. 28119 (C.A. 2), decided January 24, 1964, 55 LRRM 2285. In *Missouri Transit*, the court held that a bus company which was engaged in both a short-line intrastate shuttle-busline operation and a long-line interstate bus operation violated Section 8(a)(3) and (1) of the Act when, because of the union activity of the drivers employed on its shuttle-bus operation, it unconditionally discontinued that operation and sold all of the equipment used in it to a competitor, who undertook to provide shuttle-bus service. In *Savoy Laundry*, the court found a violation of the Act in the discontinuance by a laundry of its wholesale shirt laundering division to avoid bargaining with the union representing the employees involved in that operation. While it is, of course, possible to distinguish these cases as involving the abandonment of a mere phase of a single operation in contrast to the closing of a separately incorporated plant, geographically segregated from the employer's other operations, the distinction seems immaterial once it is established that the several corporate entities are operated as a single enterprise. The court below decided the case upon that basis.

3. The underlying question—whether an employer may permanently discontinue a part of his business operations in order to avoid dealing with the union—is an important one in the administration of the Labor Act. The court of appeals so recognized by sitting

en banc in this case, and the decision has evoked wide interest and comment.[13] While, in our view, the answer in the present context is clear, one must recognize that the case involves a difficult accommodation between the claim of free enterprise to make its own decisions whether to discontinue any part of its operations for any reason and the right of employees to organize without hindrance from their employer. The problem is not academic. It has arisen with increasing frequency in recent years, both in the context of a partial [14] and a total [15] discontinuance of the business. The question is therefore appropriate for review by this Court.

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[13] See Note, *Business Liquidation as an Unfair Labor Practice*, 48 Cornell L.Q. 572 (1963); Note, *Management Rights—Employer Does Not Have Absolute Right To Go Out Of Business Where Desire To Avoid Dealing With Union Is Present*, 49 Va. L. Rev. 616 (1963); Note, *NLRB Orders Pay From Discharge Until Employees Find Substantially Equivalent Work To Remedy Anti-Union Mill Shutdown*, 111 U. Pa. L. Rev. 672, 673 (1963); Note, *Permanent Closing Of A Business Due To Employees' Union Activities Constitutes An Unfair Labor Practice Entitling Discharged Employees To Back Pay Until The Obtainment Of Substantially Similar Employment*, 51 Georgetown L. J. 633 (1963).

[14] See *Barbers Iron Foundry*, 126 NLRB 30; *Bonnie Lass Knitting Mills*, 126 NLRB 1396; *St. Cloud Foundry & Machine Co.*, 130 NLRB 911, enforced by default, 295 F. 2d 511 (C.A. 8); *Schnell Tool & Die Corp.*, 144 NLRB No. 52. Cf. *J. M. Lassing, et al.*, 126 NLRB 1041, enforcement denied, 284 F. 2d 781 (C.A. 6), certiorari denied, 366 U.S. 909.

[15] See *Star Baby Co.*, 140 NLRB 678, pending on petition for enforcement before the Second Circuit, No. 28626; *Yoseph Bag Co.*, 128 NLRB 211, remanded, *sub nom. District 65, Retail, Wholesale and Department Store Union* v. *National Labor Relations Board*, 294 F. 2d 364 (C.A. 3), original decision adhered to so far as material here, 139 NLRB 1310.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

ARCHIBALD COX,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
NANCY M. SHERMAN,
Attorney,
National Labor Relations Board.

FEBRUARY 1964.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 8790

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

and

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, INTERVENOR

ON PETITION TO REVIEW AND SET ASIDE ORDER OF THE NATIONAL LABOR RELATIONS BOARD

No. 8861

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

and

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., INTERVENORS

ON PETITION TO REVIEW AND MODIFY A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Transferred from the United States Court of Appeals for the District of Columbia Circuit

No. 8906

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DEERING, MILLIKEN AND COMPANY, INC., RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Argued June 13, 1963. Decided November 15, 1963)

Before SOBELOFF, Chief Judge, HAYNSWORTH, BOREMAN, BRYAN and BELL, Circuit Judges, sitting en banc

Thornton H. Brooks (McLendon, Brim, Holderness & Brooks on brief) for Darlington Manufacturing Company; Stuart N. Updike and John R. Schoemer, Jr. (Townley, Updike, Carter & Rodgers on brief), for Deering Milliken, Inc., and Deering, Milliken and Company, Inc.; Nancy M. Sherman, Attorney, National Labor Relations Board, Arnold Ordman, General Counsel (Dominick L. Manoli, Associate General Counsel; Marcel Mallet-Prevost, Assistant General Counsel and James C. Paras, Attorney, National Labor Relations Board, on brief) for National Labor Relations Board, and Benjamin Wyle (Patricia Eames on brief) for Textile Workers Union of America, AFL–CIO

ALBERT V. BRYAN, Circuit Judge:

The National Labor Relations Board in these consolidated cases has made these pivotal decisions:[1]

[1] 139 NLRB No. 23, decided October 18, 1962.

1. Darlington Manufacturing Company committed an unfair labor practice under the National Labor Relations Act, Section 8(a)(3)[2]—forbidding discrimination in regard to tenure of employment—by closing and liquidating its only plant, and discharging its employees, in 1956 because of the election of Textile Workers Union of America, AFL–CIO as bargaining representative for the employees;

2. Darlington must pay all of such discharged employees their wages, less current net earnings, "until the discharged employees are able to obtain substantially equivalent employment" or until they are put on a preferential hiring list by Deering Milliken, Inc.; and

3. Deering Milliken, Inc. and its affiliates are liable for the payment of these wages on the ground that Darlington, with others, was such an affiliate of Milliken and together they constituted a single employer.

In petition No. 8790 Darlington and Milliken seek to vacate these Board orders. In No. 8861 the Union, which was the charging party before the Board, prays that the orders be enlarged to require also the reopening of the Darlington plant with reinstatement of the employees, and that Roger Milliken, president of both Darlington and Milliken, notwithstanding the contrary decision of the Board, be held personally liable to satisfy the orders. In No. 8906 the Board seeks enforcement against Milliken of the Darlington liability.

As these actions have common issues they have been argued and considered together. We decline to enforce these orders of the Board against Darlington and Milliken.

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[2] 29 U.S.C. § 158(a)(3).

Darlington, chartered under the laws of South Carolina, operated a print cloth mill there, manufacturing and selling cotton greige goods. It had no other plant. In 1937 Darlington went through a Section 77B bankruptcy proceeding, 11 U.S.C. § 207 (1937 ed.). Milliken, then known as Deering Milliken & Co., Inc., as one of the largest creditors, received in payment of its debt about 41% of Darlington's common stock. When Darlington was liquidated in 1956, as previously mentioned, there were outstanding 150,000 shares of common stock owned as follows:

	Percent
Deering Milliken & Co., Inc.	41.4
Cotwool Manufacturing Corp.	18.3
Roger Milliken and members of his immediate family	8.4
Directors and employees of Deering Milliken & Co.	2.9
Outsiders or non-Milliken family or interests (about 100 stockholders living in South Carolina, 50 in New York, and more than 50 scattered over the United States)	31.0
	100.0

In March 1956 the Union commenced a campaign to organize the Darlington employees and to become their bargaining representative. An election conducted under the direction of the Board was called for September 6, 1956. The Union won, 258 to 252.

On September 12 Darlington filed objection to the election. A conference was requested on the same day by the Union to discuss a collective bargaining agreement. The request was refused by Darlington on the ground the election protest had not been decided and the Union had not been certified.

Also on September 12, the Board of Directors met, with all of them present. Following a brief discussion of the business status of Darlington, they resolved to recommend to the stockholders the liquidation and dissolution of the corporation. A meeting

of the stockholders to act upon the resolution was called for October 17. Employees of Darlington were at once told of the recommendation. While no new ones were accepted, the plant continued to fill the orders then in hand. The objection of Darlington to the election was overruled on October 8, and the Union shortly certified as the bargaining representative.

With the stockholders on October 17 adopting the recommendation of the Board of Directors by a vote of 134,911 shares to 3,774, the officers proceeded with the liquidation. Discharge of employees occurred over a span of about six weeks: from 510 employees on October 13, the payroll dropped to 460 on October 20, to 345 on October 27 and to none when the plant closed on November 24. The machinery and equipment were sold at auction on December 12 and 13, 1956. Since that time Darlington has not operated any plant in South Carolina or elsewhere.[3]

Deering Milliken & Co., Inc.'s capital stock was owned in a majority amount by members of the Milliken family. In addition they were the major (but by no means the only) shareholders in Darlington and in certain other textile corporations. The latter are the corporations referred to by the Board and in this opinion—somewhat imprecisely—as "affiliated corporations" of Milliken. Prior to 1960 Deering Milliken & Co., Inc. was not a manufactory. It was the exclusive sales representative of the producing corporations controlled by the Milliken family.

In June 1960 Deering Milliken & Co., Inc. was merged into the Cotwool Manufacturing Corporation, and the latter's name then changed to Deering Milliken, Inc., herein known as Milliken. A majority of

[3] A concise history of the proceedings in this case appears in Judge Haynsworth's opinion for this Court in *Deering Milliken, Inc.* v. *Johnston*, 295 F. 2d 865 (1961).

its stock was owned by the Milliken family. After the merger Milliken carried on the textile manufacturing formerly pursued by Cotwool.

The finding of the Board—that the decision to close the mill was an unfair labor practice under § 8(a)(3)—was spelled out in this way:

> Darlington discriminated in regard to its employees' tenure of employment by closing its plant—thereby discharged the employees—and, because the plant closing was the direct result of the employees' selection of the Charging Union as their collective bargaining representative, Darlington's retaliation against the employees for their activities in behalf of the Union discouraged the employees' continued membership in any labor organization.

Abridged and as pertinent here the terms of § 8(a)(3) are these:

> It shall be an unfair labor practice for an employer—by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

In this determination the Board acknowledged, as the Trial Examiner had found, that there were economic considerations sufficient in themselves to support the decision by Darlington to terminate operations. However, both the Examiner and the Board concluded that "the decision to close the mill was not a fact based on economic factors, and that, but for the Union's election victory, that decision would not then have been made."

Upon this premise the Board declared all the closure discharges to be unlawful, justifying the usual remedy of reinstatement and reimbursement for loss of pay. But with the shutdown complete and perma-

nent reinstatement not achievable, the relief was necessarily directed primarily to restitution of wages. The monetary redress was awarded by the Board as follows:

> [W]e shall therefore order the Respondent, Darlington, to provide back pay *until the discharged employees are able to obtain substantially equivalent employment.* (Accent added.)

Further, the Board overruling the Trial Examiner found that "Darlington occupied a single employer status with Deering Milliken and its affiliated corporations." On this basis Milliken and its affiliates were declared "liable for back pay to the same extent as we have heretofore directed with respect to Darlington" and were ordered to place the discharged employees on a preferred hiring list. Additionally, Milliken was commanded to offer employment to these discharged workers in its other mills in South Carolina or nearby States, without prejudice to their seniority and other privileges.

All of these orders were qualified by the proviso that if no work was available at the Milliken mills, then the accumulation of back pay would be tolled as and when the dischargees were put upon Milliken's preferential hiring list.

I. Our opinion is that the decision to close the plant was not an unfair labor practice. In this we accept the findings of fact made by the Board. While, as just observed, the evidence discloses substantial economic reasons warranting the determination to close the plant without reference to the entry of the Union into the plant, we accede arguendo to the contention of the Board that these reasons were not acted upon. Even if they were, however, we shall assume, again arguendo, with the Board that if unionization also

played a part in the resolve to close the plant, then the contribution of this factor may be considered as responsible for the cessation.

To go out of business in toto, or to discontinue it in part, permanently at any time, we think was Darlington's absolute prerogative. The fundamental purpose of the National Labor Relations Act is to preserve and protect the rights of both industry and labor so long as they are in the relationship of employer and employee. But the statute's scope does not exceed that province. It does not compel a person to become or remain an employee. It does not compel one to become or remain an employer. Either may withdraw from that status with immunity, so long as the obligations of any employment contract have been met. Such withdrawal, alone and of itself, does not create any obligation of either the employer or the employee to the other under the Act. *Cf.* Dissenting opinion of Board Member Rodgers in the present case. If a cessation of business is adopted to avoid labor relations, the proprietor pays the price of it: permanent dissolution of his business, in whole or in part. A statute authorizing an order forcing the continued pursuit of operations in these circumstances would be of doubtful validity. Consider the consequences of an attempt to punish as contempt a violation of such an order, and its fatal infirmity is revealed: the proprietor would be jailed or otherwise penalized for not reopening a demised business or reinstating employees.

Of course, the right of discontinuance which we here uphold, means an actual, unfeigned and permanent end of operations—not a removal, nor subcontract, nor a change merely in the form of the corporate entity. No ruse or subterfuge is suggested here. Darlington's was an absolute desistence, not a

temporary intermission as apparently was contemplated in *N.L.R.B.* v. *Norma Mining Corp.*, 206 F. 2d 38 (4 Cir. 1953). There was no provisional lockout, the mill was not transplanted elsewhere, and its sale was concededly entire, bona fide and irrevocable. The Trial Examiner demonstrated beyond debate that Darlington was not a "runaway" plant—that is, a plant having another existence in another form—finding that Darlington was not hidden among the other Milliken corporations. No disagreement with this finding was, or on substantial evidence could have been, expressed by the Board.

"There is no decided case," the Board candidly states, "directly dispositive of Darlington's claim that it had an absolute right to close its mill, irrespective of motive." While a number of the decisions on the point mention the presence of a legitimate economic reason in connection with the right to close, an analysis of them discloses that they do not declare the existence of such a reason to be indispensable to the validity of the closing. See e.g., *NLRB* v. *Preston Feed Corp.*, 309 F. 2d 346, 352 (4 Cir. 1962); *NLRB* v. *New England Web, Inc.*, 309 F. 2d 696, 700 (1 Cir. 1962); *NLRB* v. *Rapid Bindery, Inc.*, 293 F. 2d 170, 175 (2 Cir. 1961); *Union Drawn Steel Co.* v. *NLRB*, 109 F. 2d 587, 592 (3 Cir. 1940). Nor are they precedents for the proposition that an owner or operator cannot go out of business at his option if the closure is intended to be, and is in truth, absolute and permanent. These authorities, we think, support the view that if the termination is without intent to resume the business elsewhere—as a runaway—the power to close, even if spurred by unionization, is not precluded by the Act.

The right is implicitly recognized in *Southport Petroleum Co.* v. *NLRB*, 315 U.S. 100, 106 (1942),

with Justice Jackson saying, "Whether there was a *bona fide* discontinuance and a true change of ownership—*which would terminate the duty of reinstatement*" was a question of fact determinable by the Board or the Court on contempt proceedings. [Accent added.] Bona fides does not mean exclusively an economic ground, but as well that the termination was, as here, not merely a gesture but an actuality.

Lower courts have long given explicit sanction to the right of discontinuance. Over 20 years ago the Fifth Circuit said in *NLRB* v. *Tupelo Garment Co.*, 122 F. 2d 603, 606 (5 Cir. 1941):

> The stockholders of Tupelo Garment Co. [the employer] had the absolute right to dissolve their corporation and the Board was without authority to prevent this.

Recently, the Sixth Circuit put it this way in *NLRB* v. *R. C. Mahon Co.*, 269 F. 2d 44, 47 (6 Cir. 1959):

> We find nothing in the National Labor Relations Act which forbids a company, in line with its plans for operation, to eliminate some division of its work. As held in National Labor Relations Board v. Adkins Transfer Company, Inc., supra, [226 F. 2d 324] an employer faced with the practical choice, either of paying enhanced wage rates demanded by a union or of discontinuing a department of its business, is entitled to discontinue.

Other courts have spoken in like manner and as emphatically, e.g., *NLRB* v. *New England Web, Inc., supra,* 309 F. 2d 696, 700; *Jays Foods, Inc.* v. *NLRB,* 292 F. 2d 317, 320 (7 Cir. 1961); *NLRB* v. *New Madrid Mfg. Co.,* 215 F. 2d 908, 914 (8 Cir. 1954); *NLRB* v. *Caroline Mills, Inc.,* 167 F. 2d 212, 214 (5 Cir. 1948); *Atlas Underwear Co.* v. *NLRB,* 116 F. 2d 1020, 1023 (6 Cir. 1941).

To be sure, there are decisions adjudging the employer liable even upon an absolute disposition of all or a part of the business equipment; *NLRB* v. *Kelly & Picerne, Inc.*, 298 F. 2d 895 (1 Cir. 1962); *NLRB* v. *Missouri Transit Co.*, 250 F. 2d 261 (8 Cir. 1957); *NLRB* v. *Bank of America*, 130 F. 2d 624 (9 Cir.), cert. denied, 318 U.S. 791 (1942). Upon examination, however, it will be observed that these cases did not involve the extinguishment altogether of the business and the end of further participation by the employer in his former sphere. The predominant element of the principle we maintain is that the business is no longer extant and the owner has forfeited the penalty for withdrawing, that is, he has forgone the privilege of further pursuit of his business.

II. The doctrine of single employer, heretofore noted, was used by the Board to project Darlington's liability, as determined by the Board, upon Milliken. See *NLRB* v. *Gibraltar Industries, Inc.*, 307 F. 2d 428, 431 (4 Cir. 1962), cert. denied. 372 U.S. 911 (1963); *NLRB* v. *Deena Artware, Inc.*, 361 U.S. 398 (1960). Our decision that *Darlington* is without liability, of course, bars such expansion of responsibility. Furthermore, even if Darlington was a division of Milliken, the transfer of Darlington's liability to Milliken upon the single employer principle is precluded because, as we have stated, a part, like the whole, of a business may be abolished when the extinction is consummated in circumstances like the present.

III. In its petition the Union asked us to enlarge the Board's order to include Roger Milliken individually in the orders of restoration of wages entered by the Board. This prayer like the further prayer of the Union that Darlington be required to reopen its plant is, obviously, denied by our acquittal of Darlington of liability.

The Board sustained the Trial Examiner in finding that Darlington had violated § 8(a)(1) in pre- and post-election statements and urging a repudiation of the Union. Likewise § 8(a)(5)—wherein refusal to bargain is made an unfair practice—was found contravened by Darlington. Remedies for these offenses are not now available as Darlington is no longer alive.

Power to command an employer to stay in business indefinitely, or assess him with damages for permanently going out of business, is not a National Labor Relations Board prerogative. Assumed by the Board in these cases, it is denied here.

Enforcement of Orders Denied.

J. SPENCER BELL, Circuit Judge, with whom Sobeloff, Chief Judge, concurs, dissenting:

If I read the majority opinion correctly it stands for the proposition that an employer may cease business in whole or in part for any reason, including anti-union bias, so long as such cessation is actual, unfeigned and permanent. It also holds that having ceased business and thereby terminated the employer-employee relationship, an employer may not be held liable under the National Labor Relations Act for any violations committed prior to his cessation of business. Since, in the opinion of the majority, an employer may cease business in part for any reason, including anti-union bias, they do not reach the question presented by the Board's finding that Deering Milliken [4] constituted a single employer of which Darlington was a part.

[4] Throughout this opinion Deering Milliken is used to refer to the entire complex of 27 manufacturing corporations and the affiliated service corporations unless it is clear from the context that the reference is to the factoring and sales agency, Deering Milliken and Company, Inc., later merged into Cotwool Manufacturing Corp. and then called Deering Milliken, Inc.

In my opinion the question presented to this court is whether an employer commits an unfair labor practice when he closes down a part of his business in order to discourage the practice and procedure of collective bargaining and to retaliate against his employees for exercising their freedom of self organization under the National Labor Relations Act. Not only does such conduct violate the basic policies embodied in the Act; it is literally within the proscription of Section 8(a)(3). Furthermore, it has been held to be an unfair labor practice by prior decisions of this and other Circuits, and I am unable to read the cases cited by the majority in support of its opinion as holding to the contrary.

SINGLE EMPLOYER STATUS

The Board found that there was a sufficient degree of common ownership and control of labor relations and operations among Darlington, Deering Milliken, and its affiliated corporations to hold that these entities were in reality a single employer under the National Labor Relations Act.

As this court held in *N.L.R.B. v. Gibraltar Industries, Inc.*, 307 F. 2d 428, 431 (4 Cir. 1962), cert. denied, 372 U.S. 911 (1963), a Board determination that two or more economic entities constitute a single employer is entitled to judicial approval if "there is substantial evidence in the record to support the Board's conclusion and order". The court in review, moreover, may not "displace the Board's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo*". *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488 (1951). I am convinced, upon review of the record as a whole, that there was an abundance of evidence to support

the Board's position that Darlington, Deering Milliken and its affiliates constituted a single employer for purposes of the Act.

The record reveals that Darlington at the time when it ceased operations was one of seventeen corporations in the Deering Milliken complex owning and operating twenty-seven manufacturing plants scattered throughout the Eastern Seaboard. Deering Milliken performed the dual function of selling goods produced by each of these manufacturing corporations and factoring their accounts receivable.[5]

The head of Deering Milliken's Tax Department, C. W. Kable, Jr., was an officer of each of the seventeen manufacturing corporations. His Department prepared all federal and state tax returns of the manufacturing corporations and advised them on a wide variety of tax benefits to be derived through following the Department's suggestions in such matters as accounting procedures, vacation plans, and incentive compensation contracts for supervisors. The Tax Department also advised the various manufacturing corporations in the proper drafting of minutes of directors' and stockholders' meetings.

The Deering Milliken Insurance Department handled all insurance for the various plants. The manufacturing corporations purchased standard forms of insurance through the Insurance Department, with policies running to each of them. Fire insurance and workmen's compensation insurance, however, were purchased under a policy covering all the plants. Significantly, Deering Milliken paid premiums on an

[5] Each mill corporation was charged a fee for services rendered. The service charges made were substantially less than those which would have been made by independent selling and factoring agents. Also of importance is the fact that Deering Milliken had no other non-Milliken affiliated mills as clients.

executive air insurance policy covering both Deering Milliken executives and key manufacturing personnel, along with those employed by Deering Milliken Service Corporation and Deering Milliken Research Corporation.

The Deering Milliken Service Corporation, a wholly owned subsidiary of the seventeen manufacturing corporations, was organized in 1951 for the stated purpose of providing "essential services to organizations in the textile industry at the lowest possible cost". These services were restricted, almost exclusively, to those corporations in the Deering Milliken chain. Various departments of Deering Milliken Service purchased all machinery, equipment, and cotton for the manufacturing plants. Research was conducted in the area of product improvement and studies were regularly made in connection with production problems common to several or all of the plants. Based on its findings, Deering Milliken Service made recommendations to the various manufacturing corporations with a view toward obtaining maximum efficiency from raw materials, equipment, and personnel. These recommendations directly affected the work loads and work speeds in the manufacturing plants, a critical area of labor relations.

The Placement Department of Deering Milliken Service conducted an annual recruitment program among college students, seeking to attract supervisory personnel for each of the manufacturing corporations. The prospective management and technical trainees were encouraged to look upon the organization as a whole. The record reveals that after hiring there was considerable movement of supervisory personnel between corporations. For instance, approximately half of the supervisors who worked at Darlington between 1951 and 1956 were hired from other

Deering Milliken corporations, as was Darlington's Mill Treasurer, James M. Oeland.

Supplementing the services carried on by Deering Milliken Service, Deering Milliken Research Corporation conducted surveys and inspections in the manufacturing plants toward the goal of standardizing a preventative maintenance system common to all of the mills.

The record, in sum reveals that the Deering Milliken complex was a thoroughly integrated, monolithic enterprise. The participating mills were able to call upon various service arms of the enterprise to effect optimum employment of men, material, and machinery. Sales were made and factored through a common agency. Management personnel was jointly recruited and transfers freely made from one corporation to another. Moreover, descriptive literature and advertising published by Deering Milliken on behalf of the manufacturing corporations repeatedly emphasized the generic brand name of Milliken rather than individual corporate brand names.

After the alleged unfair labor practices which formed the subject matter of the present controversy, Deering Milliken & Co., Inc., in 1960 merged into the Cotwool Manufacturing Corp. to form Deering Milliken, Inc., and several of Cotwool's former subsidiaries were then liquidated into Deering Milliken, Inc. I find the merger of more than passing interest. To me it indicates that the separate corporate entities of the Deering Milliken complex were largely paper corporations which could be shifted and changed at the convenience of the Milliken family. This is highlighted by the fact that the various liquidations and mergers had no substantial effect on the actual functioning of the various entities within the Deering Milliken enterprise. Minot Milliken, Vice President of Deering

Milliken, Inc., himself testified that nothing "of substance" was changed as a result of the merger. I think the ease with which this corporate change was made in 1960 strongly indicates that the Deering Milliken complex in 1956 at the time of Darlington's dissolution was a single employer in which "corporate forms [were] largely paper arrangements that [did] not reflect the business realities". *N.L.R.B.* v. *Deena Artware, Inc.*, 361 U.S. 398, 403 (1960). The critical question becomes, therefore, did the Board have substantial evidence upon which to base its conclusion that there was a degree of common control and ownership existing in this unified industrial complex to warrant finding a single employer?

As pointed out in the majority opinion, Deering Milliken's capital stock was owned in majority amount by the members of the Milliken family. In addition they owned controlling stock in Darlington and in all of the other manufacturing corporations. These mill corporations, in turn, owned all the shares of Deering Milliken Service Corporation, and, along with Deering Milliken & Co., Inc., all the shares in Deering Milliken Research Corporation. The stock ownership was used by the Milliken family to place members of the Milliken family in the position of corporate officers and board directors of the various corporations. Roger Milliken was President of Deering Milliken and President also of all the manufacturing corporations except Laurens (where he was Vice President and on the Board of Directors). A majority of the directors of all the manufacturing corporations except one (Hartsville) were members of the Milliken family. Deering Milliken doesn't seriously deny that the Milliken family's stock ownership permitted the family, and more specifically Roger Milliken, to exercise dominion and control over all phases of busi-

ness and labor relations at each mill and over each and every corporate entity in the entire complex, but rather, it strongly denies that such control was actually exercised.

The Board found that through majority stock ownership and interlocking directories, the Milliken family (especially in the person of Roger Milliken) was able to and did exercise actual control in the area of labor relations. As stated by the Board:

> Roger Milliken, the president of all of the corporations save one, exercised ultimate control over the labor relations of all of the corporations. Thus he received reports from each of the mills as to progress in reducing the number of jobs, the pay raises given, hours worked and job assignments, was asked for approval of various personnel actions, and made suggestions as to the hiring of personnel. More important, however, was Roger Milliken's participation in the area having the greatest impact on labor relations—the area of collective bargaining. Thus he circulated a memorandum and editorial which was obviously intended as a primer for the managers of the mills in combatting union organization. During the organizational campaign his pervasive influence was demonstrated by the statements of supervisory employees that Roger Milliken would close the plant rather than permit its unionization.

The Board does not suggest that Roger Milliken actually engaged in the day to day direction of labor relations at each of the plants. The day to day details inevitably had to be left to the resident chief executive officers, the Mill Treasurers. Everything other than over-all direction and guidance as to company policy of labor relations would, of necessity, have to be exercised by subordinates. Indeed it seems remarkable that Roger Milliken had the time, in view of his far

flung interests and responsibilities, to keep informed about labor relations in the individual mills and to make the detailed suggestions as to many facets of labor relations that the record reveals he did. The record is replete with suggestions and recommendations by Roger Milliken to the Mill Treasurers on ways to improve and reduce jobs. For instance, Roger Milliken on different occasions proposed that each piece of machinery be tagged with its cost to discourage misuse, that closed circuit television be utilized to eliminate certain jobs, that machinery be rearranged to reduce the operator's walking distance, that the time which employees spent smoking be limited, and that beverage dispensing machines for employee use be installed. These suggestions were usually made in reference to "our" mills. These and other suggestions were not always followed, but they unmistakably indicate that Roger Milliken kept himself constantly informed as to what was occurring.

Proof of Roger Milliken's ultimate and uncontradicted control over major policies affecting labor relations was illustrated by his decision, with approval of his family, to close the Darlington plant because of the employees' decision to be represented by a union.

After the union had won the Board supervised election of September 6, 1956, Darlington Mill Treasurer Oeland and Darlington attorney Poag telephoned Roger Milliken to advise him of the union's victory. One day later, Roger Milliken decided to close down the mill. Roger Milliken informed three members of his family, who were on the Darlington Board of Directors, of his intention to close the mill; he did not inform Mill Treasurer Oeland. On September 12, the Board met and unanimously passed a resolution to close the mill. This resolution was acted upon at a shareholders' meeting of October 17 and passed by a

large majority, with only a few shareholders who were residents of the Town of Darlington voting against liquidation. Immediately after the shareholders' meeting, Roger Milliken was informed by South Carolina State Senator Mozingo, a resident of the Town of Darlington, that 83% of the mill employees had signed a petition to go back to work. Roger Milliken's reply was: "As long as there are 17% of the hard core crowd here I refuse to run the mill".

Thus I find in the record overwhelming evidence to support the Board's holding:

> [W]e conclude that Deering Milliken, primarily through the person of Roger Milliken, exercised control over the labor relations of all the corporations, including Darlington. Although the details of day-to-day personnel relations may have been, of necessity, conducted at the mills, it is manifest that the major decisions were exclusively in the hands of Roger Milliken. Under such circumstances it is clear that Deering-Milliken must assume responsibility for control of Darlington's labor relations.

Deering Milliken's brief contends that the Board had no basis to find that Roger Milliken was not acting solely in his capacity as President of Darlington Mills. The evidence, however, points to the fact that Roger Milliken retained ultimate control over the whole Milliken complex and acted as its chief executive officer, without delineating his various capacities. The Darlington Mill was but a small unit in a vast industrial empire employing more than 19,000 persons owned and controlled directly or indirectly by the Milliken family. Its closure was intended to be and was a grim deterrent to the thousands of employees in the affiliated plants who might entertain similar notions of unionization. Such conduct was properly considered by the Board to fasten responsibility of

his actions for unfair labor practices upon the entire complex.

CLOSING MILL UNFAIR LABOR PRACTICE

Having held that the Board had ample evidence to conclude that the Milliken complex was a single employer under the NLRA, we next consider whether under the decided cases, the act of Deering Milliken in shutting down the Darlington plant was an unfair labor practice, cognizable under Section 8(a)(3).

That the plant closure was the direct result of the organizational activities of the employees is too well documented by the record to require extended discussion. Roger Milliken himself gave that reason to his stockholders for his decision to close the mill. On approximately thirty separate occasions, supervisory personnel threatened the employees with closure in case the union won, and attributed their prophesies to Roger Milliken's well publicized hostility to unions. Milliken himself circulated to all of his mills a trade magazine article pointing out that his attitude was so well known that liquidation was inevitable from the minute the election result was announced. Darlington's belated efforts to stress the economic factors are belied by the prior history of the mill. In the nine months prior to the election, management had spent $400,000.00 in a modernization program which included not only new machinery but additions to plant structure. A belief that union wage demands and bargaining attitudes toward work loads may make future operations unprofitable does not constitute an economic reason which would excuse the respondent's conduct in this case. The Board found upon abundant evidence that the respondent's conduct was discriminatorily motivated.

> Conduct which on its face appears to serve legitimate business ends in these cases is wholly

> impeached by the showing of an intent to encroach on protected rights. The employer's claim of legitimacy is thereby totally dispelled. [Citing cases].
>
> * * * "The ultimate problem is the balancing of conflicting legitimate interests. The function of striking that balance to effectuate national labor policy is often a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board, subject to limited judicial review. *Labor Board* v. *Truck Drivers Union*, 353 U.S. 87, 96". *National Labor Relations Board* v. *Erie Resistor Corporation, et al.*, 31 U.S.L.W. 4407, 4409, 4411 (U.S. May 13, 1963).

This court has held, in unison with other Circuits, that an employer may neither temporarily shut down operations to avoid bargaining with a union, *N.L.R.B.* v. *Norma Mining Corp.*, 206 F. 2d 38 (4 Cir. 1953), nor may he subcontract out work to another employer formerly done by a division in his business for that purpose, *N.L.R.B.* v. *Preston Feed Corp.*, 309 F. 2d 346 (4 Cir. 1962). Moreover, other Courts of Appeals have held that an employer may not transfer work to another plant owned, directly or indirectly by the employer himself, to avoid bargaining. See, e.g., *N.L.R.B.* v. *United States Air Conditioning Corp.*, 302 F. 2d 280 (1 Cir. 1962); *N.L.R.B.* v. *Winchester Electronics, Inc.*, 295 F. 2d 288 (2 Cir. 1961); *N.L.R.B.* v. *Lexington Electric Products Co.*, 283 F. 2d 54 (3 Cir. 1960), cert. denied, 365 U.S. 845 (1961); *Butler Bros.* v. *N.L.R.B.*, 134 F. 2d 981 (7 Cir. 1943). I fail to see any distinction in principle between such conduct and that of the Respondent here.

More to the point, I consider the decision of this court in *N.L.R.B.* v. *Preston Feed Corporation*, 309 F. 2d 346 (4 Cir. 1962) as controlling on the legal issue here. In that case the Board sought enforce-

ment of its order requiring the employer to reinstate its trucking operations which the Board found had been closed down in order to discourage unionization among its employees. This court enforced the order, pointing out that although the employer had decided for valid economic reasons to close the operation in the future, its sudden and precipitate closure was to discourage unionization and, therefore, constituted an unfair labor practice which could be remedied by requiring reopening until the employer could vindicate its closing for economic reasons. Judge Soper, speaking for a unanimous court, recognized the employer's right to close for valid economic reasons:

> The question has been considered in a number of cases in which the Board, in order to effectuate the purposes of the Act, has thought it desirable to require an employer to continue a certain business operation or department which he desired to abandon. In these cases it has been uniformly held that the Board is without power to interfere with management *where the discontinuance of a part of the business is prompted by legitimate business motives and not in order to frustrate the purposes of the Act or interfere with employees in the exercise of rights conferred upon them by the statute.* [Citing cases.] [Emphasis added.]
>
> In the instant case, as we have seen, the initial decision of the Company to close its trucking department was based on economic reasons and not on hostility to the union, but the immediate decision and the prompt closing of the department on March 6th, when it was discovered that the employees led by the union were insisting upon their rights under the statute, was impelled by the intent to restrain the employees in their rights to collective bargaining. We shall, accordingly, enter a decree that the order of the Board in these and other particulars be enforced * * *. 309 F. 2d 352.

It is apparent that the Board's order in this case is within the rationale of this Court's judgment in the *Preston* case. See also *N.L.R.B.* v. *Norma Mining Corp.*, 206 F. 2d 38 (4 Cir. 1953), where this court through Judge Dobie, speaking for a unanimous court, enforced the order of the Board requiring an operating lessee to reopen a mine closed by the employer in violation of Section 8(a) (1) and (3) of the Act.

Again, the Eighth Circuit in *N.L.R.B.* v. *Missouri Transit Co.*, 250 F. 2d 261 (8 Cir. 1957) faced a situation closely analogous to the one we have here. The Board's finding of an unfair labor practice and the relief granted by the Board and enforced by the court support the Board in this case. The Missouri Transit Company was a common carrier of passengers by bus for hire engaged in two operations: one a short-line intrastate shuttle bus operation between Waynesville, Missouri, and Fort Leonard Wood, Missouri; the other a long-line interstate bus operation between Fort Leonard Wood and Cedar Rapids, Iowa. As a result of union attempts to organize the shuttle-line bus drivers, the company sold all the equipment used in the operation of the shuttle route to a competitor. This action resulted in the discontinuance by the company of the shuttle-line route and service, and terminated the employment of all shuttle-line bus drivers. Upon the filing of an unfair labor practice against the company, the Board found that the company had disposed of the shuttle-line route and equipment used in operating it, and had discharged the shuttle-line drivers, for discriminatory reasons, in violation of Sections 8(a) (3) and (1) of the Act. In granting affirmative relief, the Board ordered that the company place the discharged drivers on a preferential hiring list for priority con-

sideration for jobs in the long-line operations and that the company pay back wages to these individuals from the date that the shuttle-line bus operations were closed to the date when they were either reinstated or placed on a preferential hiring list.

The company contended that the Board was powerless either to order back pay beyond the time when the shuttle-line bus operation ceased or to order reinstatement in a completely separate and independent division of the company. The Eighth Circuit rejected the Company's contentions and ordered enforcement of the Board's order in full. I think the logic of the *Missouri Transit* case compelling and the application of the principles announced clearly appropriate to case here being considered.

In *N.L.R.B.* v. *Wallick,* 198 F. 2d 477 (3 Cir. 1952), the court sustained a Board order requiring a respondent partnership which operated several enterprises engaged in the manufacture of ladies' garments to either reopen a plant which it had closed in violation of the Act because its employees had organized or give its employees an opportunity to work in other plants operated by the partnership. This was true even though the closed plant was owned by a separate corporation the stock of which was owned by the individual partners. See also *A. M. Andrews Co. of Oregon* v. *N.L.R.B.,* 236 F. 2d 44 (9 Cir. 1956).

In the present case, even absent single-stockholder status, the employees had a remedy. After the Darlington stockholders on October 17, 1956, had adopted the recommendations of the Board of Directors to liquidate the Darlington Mill, employees were discharged in separate groups over the intervening period until the plant closed on November 24. Yet, pursuant to the laws of South Carolina, the corporation continued to exist for the purpose of liquidat-

ing its assets and settling its liabilities. If, as the Board found, amply supported by the record as a whole, these discharges were for discriminatory reasons under Section 8(a)(3), relating to the employees' "tenure of employment", then at a very minimum the amounts realized from the sale of Darlington machinery and equipment should be allocated to reimbursing the discharged employees for lost wages from the time of their discharges until the liquidation of the corporation had been completed. It is obvious that if one or two, or even a majority of employees had been discharged for their activities on behalf of the union, then the court would uphold a Board finding of an 8(a)(3) violation. It seems tortuous logic to say, therefore, that because the company discharged without distinction both the employees who voted against the union (but who were discharged nonetheless because a majority of the employees elected to be represented by a union), the company is absolved from liability under the Act.

But beyond this remedy I think the Board was justified in ordering Deering Milliken to provide back pay until the discharged employees were able to obtain substantially equivalent employment. The record reveals that a large number of Darlington supervisory personnel was absorbed into the Deering Milliken complex. Late in September 1956, the Deering Milliken Industrial Engineering Department sought and obtained from Darlington Mill Treasurer Oeland a list of Darlington Supervisory personnel who might be "useful" to it. All of these men were interviewed by the Department. Plans were made to have all supervisory personnel of the Darlington Mill transferred to the Department's payroll for the three month period after their separation from Darlington. The purpose of this arrangement was to provide a

period of time within which these men could be "picked up" by other Deering Milliken Mills. Some of these supervisors were actually picked up, going directly on the payroll of other mills without an interval on the payroll of the Department. Others were transferred to other parts of the Deering Milliken organization. Although some supervisors ceased their affiliation with Deering Milliken entirely, these were given time off, with pay, in which to seek new employment opportunities. One of these men was Mill Treasurer Oeland, who remained on the Darlington payroll until July, 1957, some seven months after mill machinery and equipment had been sold. In addition, a few supervisors received bonus payments after the Darlington closing in appreciation of their efforts during the union crisis. Thus, even though the Deering Milliken complex disclaims any responsibilities after the Darlington closing for those whom it regards as its enemies, it managed to reward and find places for those whom it regarded as its friends. I see nothing to prevent enforcing the Board's order which would also require Deering Milliken to offer substantially equivalent employment to non-supervisory personnel who were equally adversely affected by the mill's closing.

I am not unmindful of the Board's findings that Darlington committed other violations in addition to the 8(a)(3) here discussed, specifically 8(a)(1) and 8(a)(5). The repeated threats of members of management that the mill would be shut down if the union won the representation election constituted a classic form of interference, restraint, and coercion proscribed by Section 8(a)(1). Section 8(a)(1) was also violated by management threats to blacklist union adherents, their interrogation of employees regarding their union activity, and their support of a petition

disavowing the union after the announced intention of Roger Milliken to close the mill upon learning of the union victory.

The Board also found that the failure of the Company to bargain with the union with respect to the tenure of employment of the employees in the Darlington Mill and to furnish the union with wage and related bargaining data constituted an unfair labor practice under Sections 8(a)(5) and (1). I am convinced that the record as a whole amply supports the Board's findings, but do not feel that an extended discussion of these violations is warranted here.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 8861

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., INTERVENORS

ON PETITION TO REVIEW AND MODIFY A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

THIS CAUSE came on to be heard upon the petition of Textile Workers Union of America, AFL-CIO, to review and modify a decision and order of the National Labor Relations Board entered on October 18, 1962, in a proceeding entitled Darlington Manufacturing Company, Roger Milliken, Deering, Milliken & Co., Inc., and Textile Workers Union of America, AFL-CIO, known upon the Board's records as Case

No. 11-CA-1292; upon the certified list in lieu of a transcript of the record; the answer of the respondent; the amended petition to review, and the answer of the National Labor Relations Board to the amended petition to review, and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth Circuit, that the said petition be, and the same is hereby, denied.

CLEMENT F. HAYNSWORTH, Jr.,
United States Circuit Judge.

HERBERT S. BOREMAN,
United States Circuit Judge.

ALBERT V. BRYAN,
United States Circuit Judge.

I dissent:

J. SPENCER BELL,
United States Circuit Judge.

I concur with the dissent:

SIMON E. SOBELOFF,
Chief Judge, Fourth Circuit.

A true copy,
Teste:

MAURICE S. DEAN,
Clerk, U.S. Court of Appeals for the Fourth Circuit.

By MARGARET L. DAVIS,
Deputy Clerk.

(Filed November 19, 1963; Maurice S. Dean, Clerk.)

APPENDIX B

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; * * *

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit

appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

* * * * *

SEC. 10. * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * * * *

APPENDIX C

The memorandum and attached article circulated by Roger Milliken on November 16, 1956 (General Counsel's Exhibit N–1), are as follows:

Date: November 14, 1956

To:

Mr. C. E. Anderson
Mr. George Asnip
Mr. J. M. Bailey
Mr. D. I. Beal
Mr. S. J. Craig, Jr.
Mr. E. O. DeFore
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. J. A. Meehan
Mr. W. H. Moore
Mr. J. J. Norton, Jr.
Mr. R. C. Owings
Mr. T. E. Peden
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. H. B. Risher
Mr. J. V. Roberts
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill
Mr. M. G. Wallace
Mr. R. H. Bush
Mr. H. C. Byrd
Mr. Harry Defore
Mr. K. M. Lowry
Mr. R. B. Newton
Mr. S. L. Smith
Mr. T. D. Truluck

From: Roger Milliken

Attached hereto is an article from the November eighth issue of AMERICA'S TEXTILE REPORTER. I am sending it to you in case you have not had an opportunity to see it. It is apparent from this article that this magazine made a real investigation in Darlington, and for that reason, I think the article is interesting.

While this article shows that the union leaders definitely misled the people, it also points out that the mill

was negligent in its public relations. I hope that you will read this second part of the article carefully and review in your mind the steps that you are taking to bring about an understanding of your mill and its problems in your community. The unions are going to be making a tremendous drive all through this area, and there are few things that are more important to us than making sure that the leaders in your community understand and are sympathetic to what you are trying to do.

Enclosure.

cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

Darlington Situation Becomes Object Lesson to All Concerned

Present stepped-up union activity in South harbinger of stronger efforts and more exaggerated promises to come

The Darlington (S.C.) Mill affair is becoming a tangled mess. And the question most frequently asked in textile circles, how does a community of 500 mill workers who admitted satisfaction with their wages, work loads and working conditions in a well equipped mill, suddenly elect to place their future in the hands of strangers representing the Textile Workers Union of America?

Hundreds of answers have been forthcoming from Darlington during the past few weeks since an NLRB election was won by the union by a slim margin of eight votes, 256 for the union and 248 against.

In order to sift the charges and counter-charges of management and labor and the workers themselves, a Reporter editor visited the town of Darlington and interviewed the Mayor, Chamber of Commerce

Secretary, bankers, gas station operators, hotel managers and several of the workers from the mill.

The picture proved a confusing one, but the pattern and the reasons for the worker's unfortunate choice, become more apparent as the workers themselves repeated over and over that they did not want the union, they were satisfied with their jobs and the pay, but they voted in favor of it because the organizers threatened their future.

As it stands now, the stockholders of the company voted on October 17 to liquidate the mill at public auction on December 12 and 23. Stock in process is being run out at the mill, with about half of the employees already laid off as of October 23.

The events leading up to the election and the problems facing the employees and management of the Darlington mill, the union threats and promises stand out as the most important factor.

This was affirmed by personal interviews with workers, Mayor Thomas W. Buchanan and Chamber of Commerce Secretary, Joseph Funderburk. Some affidavits from over a dozen former Darlington workers attested to the fact that union organizers called on them at their homes and repeated statements to the effect that if they failed to vote the union into the mill, management would make their working conditions unbearable, and that there was nothing the mill could do about liquidating or closing the mill once the union was in control.

Again and again in personal interviews with these Darlington workers, many of whom were dismissed from their jobs a day after the liquidation vote, the promises of the union were uppermost in their minds. One card fixer who asked that his name not be used said, "They promised us everything at the union meetings, nothing on paper or anything like that, but

after the election when the mill voted to close, the best they could suggest was that we get individual lawyers and sue the mill for firing us out of our jobs."

"And the union fellows—the big men who spoke to us last Sunday promised that the union would have an investigation." The former Darlington worker was not bitter as he continued to relate the happenings at the Sunday, October 21 meeting, adding "The man (Boyd E. Payton, Southern TWUA Director from Charlotte, N.C.) said the whole union will be used for our best interest. He even said he was going to Washington to fight for us. But that's no good now, for I'm out of my job. I went into work the day after the stockholders' voted to close the mill, last Thursday it was, and I was told I was all through."

Going back a few weeks before the union election took place, it was Mayor Buchanan who told of his talks with several of the mill workers. They outlined to him that the Union was gaining a foothold. Darlington is a small city, a central square where the court house and Federal buildings overshadow the city hall. The mayor has his office in the rear of his jewelry store. While he was being interviewed he had several visits from local business men, the Chamber of Commerce Secretary and the head of one of the local banks. They joined him in the discussion of the mill situation and showed real interest and a full knowledge of the problem. Of course they were interested from an economic standpoint because although the word had been out less than a week that the mill would definitely close, business activity in the town was at a standstill. Stores were empty, the streets were deserted and four policemen were standing together in the square, talking, presumably to keep from being bored.

A gas station operator said business had dropped to half his former volume during the past two weeks and he was not taking any more charge accounts except those guaranteed by the gasoline company. The local savings bank was checking mortgages and payments and although there was not any increase in money withdrawn, there had been a noticeable decrease in deposits over the week-end.

Even the newsstand had papers left over following the first rush a week before to learn if the mill definitely would close. Everywhere the same story was repeated, "if only the union had left our people alone we could have gotten along fine." The man who pumped the gas at the gas station had a wife and mother who were working in the mill. They did not vote for the union but he said, "they have got to suffer along with the rest who listened to the promises of the union fellows."

The greatest resentment seemed to center among those who believed that the Union organizers had "gone too far" in making promises at meetings in trying to convince the workers that a few paid holidays were worth giving up their freedom for union domination. Incidentally the paid holidays seemed to be the only actual offer made by the union other than many promises to do what they could to change the management of the mill.

A worker who voted for the union said, "I had no complaints only that they were going to put in a conveyor to handle the cans from the cards and drop one card hand. That would mean I'd had to do my card stripping and handle the cans too, with more work for the two card hands running 136 cards. The Union fellow told me if they got the vote he'd keep it the old way of three card hands, and one stripper

to the 136 cards with no conveyor. That's why I voted for the union," he concluded.

Of course the union man who was to have made this statement, knew that he could not prevent the installation of more efficient means of transporting card sliver, but it was this type of deceptive promise that showed up throughout the interviews with the various workers.

The lesson to be learned from the problems of Darlington for both management and labor is that the extent to which the union will go to make promises, and also the importance of direct communications between the workers and management which must be specific and flawless. Labor counsellors have repeatedly warned that the most important weapon management holds, to use in warding off unionization, is to make everyone in the mill a part of a team; make them feel a part of the success or failure of the mill in its every operation. The sense of accomplishment of the team can overcome the group or individual promises made by union organizers.

The final lesson to be learned from the Darlington affair is the need for good public relations. Properly operating, year round, public relations contact on a local and national level for large firms, operating in several areas, is of utmost importance. This was indicated again and again in discussions with Darlington officials who decried the utter lack of any attempt of public relations before, during or after the union attempted its move to take over the company.

It seems that the people of Darlington, S.C. have suddenly come face to face with the basic labor management problem: Who is going to manage? We concede that stockholders of a corporation such as the now liquidated Darlington Manufacturing Company,

being the proprietors of the company, select the management of the mill and expect that the management shall allocate the job, delegate the wages and sell goods at a profit. We further contend that the community has a certain responsibility to see that such a co-operative civic climate will exist as to assure the proprietors of the company a fair competitive chance. If the people of Darlington knew anything of the Deering Milliken record they would know that the management does not intend an unprofitable division nor has it intended to share the prerogatives of management with labor union leaders. This has been the case through three generations of Milliken operations. When the Madison Woolen Mills of Madison, Maine, became not only unprofitable but unionized, Mr. Gerrish Milliken liquidated it, although the Cowan and Farnsworth Mills in the State of Maine still operate and must, therefore, be profitable. When the Dallas Manufacturing Company of Huntsville, Alabama, became unionized, the Millikens liquidated it, contrary to the opinion of many local people that such would not be the case. We ourselves are small shareholders in Darlington and from experience and acquaintanceship, we knew the minute the union election vote was announced that we would receive a call for a special meeting to vote for liquidation. We know something about the effect of mill losses to a community having lived through hundreds of them in the Northeast. On the other hand, as one of the owners of Darlington even though an infinitesimal percentage of those shares is held in our name, we could do nothing other than vote to terminate the operations of the company if management responsibility was going to be shared with the Textile Workers Union of America.

U.S. GOVERNMENT PRINTING OFFICE: 1964

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 846

TEXTILE WORKERS UNION OF AMERICA, PETITIONER

v.

DARLINGTON MANUFACTURING COMPANY, DEERING MILLIKEN, INC., DEERING, MILLIKEN & COMPANY, INC., AND NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

This petition for certiorari involves the same judgment as the Board is seeking to have reviewed in *National Labor Relations Board* v. *Darlington Manufacturing Company, et al.*, No. 874, this Term. Petitioner was the charging party before the Board, and it was a party to the proceedings in the court of appeals.

The Board found that Darlington and Deering Milliken constituted a single employer for purposes of the National Labor Relations Act, and that they violated Sections 8(a)(3), (1) and (5) of the Act by permanently shutting down the Darlington mill in

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order to discourage the employees' union activity and in order to avoid bargaining with petitioner Textile Workers' Union (J.A. 7–19, 23–27).[1] The Board, *inter alia*, ordered that the discharged employees be offered employment or placement on a preferential hiring list at other Deering Milliken mills in South Carolina or adjacent States, and that they be given back pay from the date of the discrimination until they are employed or placed on a preferential hiring list at the other Deering Milliken mills, or obtain substantially equivalent employment elsewhere (J.A. 20–23, 27–28). The Board, however, dismissed—on the ground that the underlying charge was insufficient—a complaint issued against Roger Milliken as an individual; he is the president of both Darlington and Deering Milliken and played a leading role in the decision to shut down the plant (J.A. 29–30).

Darlington and Deering Milliken filed a petition to review the Board's order against them; the Board filed a cross-petition to enforce that order; and the Union sought review of the Board's action in dismissing the complaint as to Roger Milliken as an individual, and in failing to require the reopening of a plant in Darlington, South Carolina.[2] The court of appeals (in an *en banc* decision, two judges dissenting) set aside the Board's order against Darlington and Deering Milliken on the ground that, even if they be viewed as a single employer, the closing of the Darlington plant, since it was "permanent", did not

[1] "J.A." refers to the joint appendix filed in the court of appeals.

[2] The Union was also permitted to intervene in the proceeding brought by Darlington and Deering Milliken.

constitute an unfair labor practice (Pet. 8a–13a). The court also held that the relief sought in the Union's petition to review "is, obviously, denied by our acquittal of Darlington of liability" (Pet. 13a).

The first question presented by this petition (Pet. 2) encompasses two distinct issues. The first (which assumes that Darlington and Deering Milliken are a single employer) is whether an employer violates the Act when he shuts down one of his plants in order to avoid dealing with the union and to punish his employees for selecting the union. This is the same issue presented in question 1 of the Board's petition in No. 874, and we therefore do not oppose granting the instant petition in that respect. The second issue (which assumes that Darlington alone is the employer) is whether an employer violates the Act when he goes out of business entirely to avoid dealing with the union. This issue is not presented for, although it was an alternate basis for the Board's decision (J.A. 9–18), the court below decided the case on the assumption that Darlington and Deering Milliken constituted a single employer (see Board's petition, p. 2, n. 2). Accordingly, the petition should be denied insofar as it raises this second issue.

The second question (Pet. 2–3) relates to the propriety of the Board's remedial order in this case. Since this is substantially the same issue presented in question 2 of the Board's petition, we do not oppose granting the instant petition in that respect.[3]

[3] It may be noted, however, that petitioner is contending that the Board remedy should have gone further, i.e., ordered the reopening of a Darlington plant (Pet. 19).

The third question (Pet. 3) challenges the Board's action in dismissing the complaint against Roger Milliken as an individual. The Board dismissed this portion of the complaint on the ground that, since the charge referred to "Roger Milliken, President," he was not given sufficient notice that he was sought to be held individually liable for the unfair labor practices found (J.A. 29–30). Since this holding turns on the facts of the particular case, it is not of sufficient importance to warrant review by this Court. Accordingly, the petition should be denied in that respect.

For the reasons stated, we do not oppose granting this petition to the extent indicated above.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

ARNOLD ORDMAN,
General Counsel.

DOMINICK L. MANOLI,
Associate General Counsel.

NORTON J. COME,
Assistant General Counsel.

NANCY M. SHERMAN,
Attorney.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. ~~874~~ 41

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
DARLINGTON MANUFACTURING COMPANY; DEERING MILLIKEN, INC.; DEERING, MILLIKEN AND COMPANY; and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO.

No. ~~846~~ 37

TEXTILE WORKERS UNION OF AMERICA,
Petitioner,
v.
DARLINGTON MANUFACTURING COMPANY, DEERING MILLIKEN INC., DEERING, MILLIKEN & COMPANY, INC., and NATIONAL LABOR RELATIONS BOARD.

BRIEF OF DEERING MILLIKEN, INC. IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI

STUART N. UPDIKE
JOHN R. SCHOEMER, JR.
Attorneys for Deering Milliken, Inc.
220 East Forty-Second Street
New York, New York 10017

JOHN LORD O'BRIAN
HUGH B. COX
Of Counsel
Union Trust Building
Washington, D. C.

INDEX

	PAGE
JURISDICTION	2
QUESTIONS PRESENTED	2
STATEMENT	4
I. The Proceedings before the Board	6
II. The Decision Below	10
ARGUMENT	
I. The Question That the Board Asserts Is Presented by This Case Was Not Decided by the Court Below and the Questions That Were Decided by That Court Do Not Warrant Review	11
II. The Union's Petition in No. 846 Should Be Denied	18
A. There Was Not a Timely Filing of the Petition	18
B. The Union's Petition Presents No Questions That Warrant Review by This Court	19
CONCLUSION	21
APPENDICES	

AUTHORITIES

CASES:

Bachman Machine Co. v. *N. L. R. B.*, 266 F. 2d 599 (8th Cir. 1959)	9
Brown Shoe Co. v. *U. S.*, 370 U. S. 294 (1962)	19
Brush v. *Commissioner*, 300 U. S. 352 (1937)	13
Dearborn Oil & Gas Corp., 125 N. L. R. B. 645 (1959)	9
Deering Milliken, Inc. v. *Johnston*, 295 F. 2d 856 (4th Cir. 1961)	5

PAGE

Delta Drilling Co. v. *Arnett*, 186 F. 2d 481 (6th Cir. 1950), cert. den. 340 U. S. 954 (1951) 18

Fed. Trade Comm. v. *Minneapolis-Honeywell Co.*, 344 U. S. 206 (1952) 18, 19

J. G. Roy & Sons Co. v. *N. L. R. B.*, 251 F. 2d 771 (1st Cir. 1958) 9

Local 3 v. *N. L. R. B.*, No. 700, October Term 1960, cert. den. 365 U. S. 845 19

N. L. R. B. v. *Deena Artware*, 361 U. S. 398 (1960) 9

N. L. R. B. v. *Gibraltar Industries, Inc.*, 307 F. 2d 428 (4th Cir. 1962), cert. den. 372 U. S. 911 (1963) 14

N. L. R. B. v. *Lund*, 103 F. 2d 815 (8th Cir. 1939) 9

N. L. R. B. v. *Missouri Transit Co.*, 250 F. 2d 261 (8th Cir. 1957) 17

N. L. R. B. v. *Norma Mining Corp.*, 206 F. 2d 38 (4th Cir. 1953) 14

N. L. R. B. v. *Preston Feed Corp.*, 309 F. 2d 346 (4th Cir. 1962) 14

N. L. R. B. v. *Savoy Laundry, Inc.*, 327 F. 2d 370 (2d Cir. 1964) 17

Noel v. *Oldis*, 138 F. 2d 581 (D. C. Cir. 1943) cert. den. 321 U. S. 773 (1944) 13

Stickel v. *United States*, I. L. Ed. 2d 30 (Harlan, J.), cert. den. 352 U. S. 882 (1956) 13

United States v. *F. & M. Schaefer Brewing Co.*, 356 U. S. 227 (1958) 18

RULE:

28 U. S. C. § 2101 (c) 18

Supreme Court Rules, Rule 22(3) 18

AUTHORITIES:

Goodhart, *Determining the Ratio Decidendi of a Case*, JURISPRUDENCE IN ACTION (1953) 13

Stern & Gressman, Supreme Court Practice (3d ed. 1962) 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NATIONAL LABOR RELATIONS BOARD, *Petitioner*, v. DARLINGTON MANUFACTURING COMPANY; DEERING MILLIKEN INC., DEERING, MILLIKEN AND COMPANY; and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO.	No. 874
TEXTILE WORKERS UNION OF AMERICA, *Petitioner*, v. DARLINGTON MANUFACTURING COMPANY, DEERING MILLIKEN INC., DEERING, MILLIKEN & COMPANY INC., and NATIONAL LABOR RELATIONS BOARD.	No. 846

BRIEF OF DEERING MILLIKEN, INC. IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI

Respondent Deering Milliken, Inc. submits this brief in opposition to the petitions for certiorari of National Labor Relations Board ("the Board") and Textile Workers Union of America ("the Union").

Deering, Milliken and Company, Inc., named as a respondent in both petitions, is no longer in existence (Bd. Pet. 23), and Deering Milliken, Inc. is its successor. Refer-

ences in this brief to "Deering Milliken" will be to the former company, whose separate corporate existence did not end until 1960, nearly four years after the unfair labor practices are claimed to have occurred.

JURISDICTION

On the Board's statement in No. 874 that the time for filing its petition was extended, jurisdiction by this Court to entertain that petition is conceded.

No similar concession is made with respect to the Union's petition in No. 846. That petition was filed more than 90 days after the date of the decision below.[1] Respondent contends that this was not a timely filing, and the Court should dismiss that petition. The argument will be made *infra*, pp. 18-19.

QUESTIONS PRESENTED

We submit that this case raises no question that warrants review by this Court. The question presented by the Board as ripe for determination is one which (a) can only be answered by reference to facts not reviewed by the court below, (b) involves no considerations of widespread public importance, and (c) presents no issue on which a conflict among circuits exists.

The Board's petition in No. 874 does not raise for review the primary holding of the court below, which was that Darlington, considered alone, did not violate the Act

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[1]The decision denying enforcement of the Board's order was dated November 15, 1963, and the several decrees four days later. The Union's petition was filed February 17, 1964, the 94th day after the decision. Actually, there were three separate decrees below, both denying and granting petitions for review filed by the Union and the companies. See Appendix A, p. 3a.

when it permanently closed its only mill and dissolved its corporate existence, even if it is assumed that "unionization also played a part in the resolve to close the plant" (Bd. Pet. 25-6). On the contrary the Board's petition expressly disavows any intention to raise this question (p. 14), and the memorandum filed by the Solicitor General in response to the Union's petition in No. 846 asks that the petition be denied insofar as it seeks to raise this issue (p. 3). In any case the holding of the court below on this point is plainly correct, involves no conflict among the circuits and presents no question that justifies review by this Court.

The Board's petition (p. 2) asserts that the question presented that justifies issuance of the writ is whether an employer "who owns several plants" violates the National Labor Relations Act by permanently discontinuing "operations in one of the plants" in order to avoid bargaining with the Union.

It is significant that the Board's petition does not assert that this case now presents the question whether there was a violation of the Act because an employer "who owns several plants" permanently discontinued operations "in one of the plants" to avoid dealing with the Union. On the contrary, the Board takes the position that this question should be determined "on remand" (Pet. p. 10, n. 6a).

In short, the Board's petition asks this Court to review a question that is abstract and hypothetical in the sense that even if it is answered in the affirmative it will not be dispositive of this case.

The Board seeks to justify this request by reading the opinion of the Court of Appeals as deciding, in addition to its primary holding, a broad principle of general application, *i.e.*, that an employer who owns several plants does not violate the Act if he closes down one plant to avoid bargaining with the Union (Bd. Pet. 11). The passage in the

opinion of the Court of Appeals relied upon by the Board does not support this interpretation of the decision below. As we shall show (pp. 12-18), whether this passage is regarded merely as dictum or as an eessential part of the Court's holding, the views it states are confined by the Court's own words to "circumstances like the present" (Bd. Pet. 29), that is, to the peculiar facts of this case. So far as concerns the obligations of multi-plant employers, the passage lays down no rule or principle of general application, involves no general interpretation of the statute and does not conflict with the decisions of other Courts of Appeal. As the language of the Court of Appeals is limited in its application and meaning to the particular facts here involved, it has no significance beyond those facts, and it raises no question of general importance that deserves review by this Court.[2]

STATEMENT

The circumstances of this case are extraordinary. It has no exact parallel in the past and is not likely to have any in the future. The case arises because in 1956 Darlington closed down the only textile mill that it owned and, acting in accordance with the laws of the state of its incorporation, disposed of all of its properties, liquidated its operations and dissolved. These actions, which were taken after an election in which the Union was chosen as the bargaining representative, were found by the Board to have violated § 8(a)(3) of the Act because prompted in part by the unionization of the plant even though the Board noted that there were "6 truly economic factors" that might have justified closing the plant (JA 8).

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[2]The additional questions that the Union seeks to raise by its petition in No. 846 are discussed *infra*, pp. 20-21.

Eight years have now elapsed since the closing of the plant. This period of time was largely consumed in lengthy proceedings before the Board.[3] There were three separate hearings before the Trial Examiner and the case was twice remanded to the Examiner, once by the Board and once at the instance of counsel for the Union. The remands and the additional hearings before the Trial Examiner were the result of attempts by counsel for the Union and the Board to implicate Deering Milliken and certain other corporations in Darlington's alleged violation of the statute.

In its final opinion in 1962 the Board concluded that Darlington, even if it was considered as the only employer involved, violated the National Labor Relations Act by closing down its plant and going out of existence because these actions were prompted in part by the Union's election victory (JA 8). As an additional reason for its decision, the Board, with members Leedom and Rodgers dissenting, concluded that Darlington should not be regarded as the only employer involved because it was "one constituent part of a single entity" consisting of Deering Milliken "and its affiliated corporations" (JA 18). In this respect the majority of the Board rejected the report of the Trial Examiner. The Board's opinion did not contest the fact that the dissolution and liquidation of Darlington were complete and final and the Board made no finding that in any way weakened the Trial Examiner's finding (JA 176-7) that the business formerly carried on by Darlington was not being continued by Deering Milliken or by any of the other corporations described as "affiliated".

The conclusion of the Board that Darlington was not the only employer involved was remarkable in a number of

[3]The proceedings in the case between 1956 and 1961 are described in the Fourth Circuit's opinion in *Deering Milliken, Inc.* v. *Johnston*, 295 F. 2d 856 (1961), where the court limited hearings under the Board's second remand order to a single narrow issue.

respects. It was not based on any finding that the managements of the various companies involved had so conducted their affairs that under familiar and conventional standards it could be said that they themselves disregarded the separate corporate entities. Instead, it was based entirely on the theory that a group of persons described as the "Milliken family"[4] owned substantial amounts of stock in Darlington, Deering Milliken and certain other corporations which operated textile mills, and as a group exerted a substantial degree of control over the labor relations of all of these companies (JA 23-5). The Board reached this result and by its order imposed obligations and financial liability upon the "affiliated companies" despite the admitted fact that substantial amounts of stock in certain of these companies, as well as in Darlington, were held by persons who were not members of the Milliken family (JA 1309-10), and despite the fact that neither these "affiliated companies" nor the "Milliken family" were parties to the proceedings before the Board (JA 1-3).

I. The Proceedings before the Board

The Board's initial complaint in 1956 was issued against Darlington alone on the theory that it had violated the Act by permanently shutting down its plant after the Union had won a representation election (JA 44). The Trial Examiner found that there had been a violation of the statute but that since Darlington was dissolved and was no longer in business any remedial order would be punitive (JA 45). The Board declined to consider the case on its merits at that juncture (1957) and remanded

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[4] An affidavit in the record of this case recites that in 1959 the "Milliken family", *i.e.*, the lineal descendants of Seth Milliken who owned shares in Deering Milliken, consisted of 27 individuals. Today the group has increased to 66 individuals.

it for further evidence with respect to the single employer status of Darlington and related corporations (119 NLRB 1069). This remand was made over the objection of two members of the Board who said that Darlington's primary liability should first be examined. Deering Milliken was thus brought into the case for the first time.

The evidence at the second round of hearings was confined to the question whether a remedy could be directed against Deering Milliken because Darlington had violated the Act. The Trial Examiner excluded any proof relating to the substantive question of violation of the statute (JA 512, 110; Tr. 3527).[5]

On December 31, 1959, two years after the first remand and after prolonged hearings, the Trial Examiner wrote a further report finding that "clearly" a single employer status did *not* exist between Darlington and related corporations because Darlington was, in fact, an independent and autonomous corporation, not externally controlled (JA 194). Upon final review by the Board of the Trial Examiner's report, however, three members of the Board held that Darlington "was but one constituent part of a single entity, consisting of Deering, Milliken and Company and its affiliated corporations" (JA 18). Two members of the Board dissented, holding that the Trial Examiner's findings on this point should be affirmed (JA 34-5).

Since it is not our intention to raise the propriety of the Board's remedial order as a question that is now pre-

[5]Thus, when Deering Milliken sought to contradict or explain evidence by a Board witness at the first hearings that Roger Milliken had told him that the plant would not be reopened while a hard core of workers supported the Union, the Board's General Counsel immediately objected on the ground that this evidence went to violation rather than remedy, and must be excluded. He was sustained by the Trial Examiner (JA 1234-36). This alleged "hard core" conversation is constantly cited by the Board (e.g., in its decision at JA 5-6 and its petition at p. 6) and the Union (Pet. 7).

sented (see p. 20, *infra*), any detailed discussion of the terms of the order is inappropriate. It should be noted, however, that in the early stages of the case, when Darlington was the sole respondent, the Board's General Counsel asked for an order for back pay covering approximately eight weeks (from the date of termination of each employee to the date the mill was actually sold) (Tr. 1144-45; JA 46). By the time the Board finally decided the case, the order actually directed back pay to the date each employee obtained substantially equivalent employment or was put on a preferential hiring list at other mills selling through Deering Milliken (JA 22).[6]

Any attempt to discuss, even in modest detail, the relationship of Darlington to Deering Milliken and to the other so-called "affiliated corporations" would unduly lengthen this response and would appear to be unnecessary in view of the fact that this Court is not asked to review the conclusions and findings of the Board relating to this issue.

We believe, however, that it is appropriate to indicate the complexity of the questions of fact and law involved in this segment of the case and the nature of the Board's conclusions with respect to those questions since these matters emphasize the highly abstract and hypothetical character of the question of law which the Board is now asking this Court to consider. Accordingly, we shall here discuss briefly certain aspects of the Board's conclusions with respect to the single employer relationship and we include in Appendix B to this response a statement of some of the salient points of evidence relevant to these matters.

The Board's case on single employer rests, essentially, on "managerial identity" among the several companies

[6] In October 1956, Darlington's payroll for bargaining unit employees amounted to about $29,000 per week (JA 284). As this brief is written, nearly 400 weeks have passed since layoffs began in anticipation of the mill's closing in December 1956.

claimed to occupy that status. As Roger Milliken was president of both Darlington and Deering Milliken, and as his family owned a majority interest in both companies, the Board has formulated from this virtually a *per se* rule of vicarious liability, far transcending its own previous holdings[7] and those of the courts.[8] It professed a willingness in the Court below to have the intercorporate relationships tested by the "paper arrangements" rule of *Deena Artware*,[9] but it actually assessed liability on Deering Milliken by ignoring the common law corporate-veil rule laid down by this Court in that case.

Thus, on the question whether Deering Milliken controlled Darlington's labor relations—the "crucial area" of the single employer cases (JA 24)—the Board's petition, after a conclusory statement to which is appended a string of record references (discussed in Appendix B, p. 5b), quotes extensively from an article in a trade magazine unconnected with the Millikens. The article, which is an editorial commenting on the effects of the Union's victory at Darlington, is frankly hostile to the Union and makes statements that the Board imputes to Roger Milliken from the mere fact of its circulation by him to the other mills in which his family was interested.[10] But the

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[7] *E.g., Dearborn Oil & Gas Corp.*, 125 N. L. R. B. 645 (1959).

[8] *E.g., J. G. Roy & Sons Co.* v. *N. L. R. B.*, 251 F. 2d 771 (1st Cir. 1958); *Bachman Machine Co.* v. *N. L. R. B.*, 266 F. 2d 599 (8th Cir. 1959); *cf. N. L. R. B.* v. *Lund*, 103 F. 2d 815 (8th Cir. 1939) (single employer status found).

[9] *N. L. R. B.* v. *Deena Artware*, 361 U. S. 398, 403 (1960), where Mr. Justice Douglas warned that "the insulation of a stockholder from the debts and obligations of his corporation is the norm, not the exception" (at 402-3).

[10] Quotations from the editorial are carefully selected by both the Board and the Union in their petitions, which omit portions of the article not helpful to the theory of guilt-by-circulation. For example, the magazine's reporter wrote that many Darlington workers told him that they voted *for* the Union because they feared the Darlington mill was failing and would probably close and the Union assured them it would force the mill to keep operating (Bd. Pet. 52).

article was not distributed until a month *after* the stockholders voted to shut Darlington and was circulated by Roger Milliken only to the management of the mills, with the explanation that it was "interesting" because it showed not only that the Union had misled the Darlington employees but that the mill had been negligent in its public relations. At the hearings, Roger Milliken testified that he did not agree with everything in the editorial and in particular challenged the assertion that the Millikens had never operated an organized mill (JA 972-73, 976-81), but the Board nevertheless termed it "a primer [for] combatting union organization" (JA 25).

II. The Decision Below

It is clear from the opinion of the court below that it regarded the primary question before it as whether Darlington violated the Act by closing down its plant and dissolving its corporate existence. Admittedly this issue was tendered to the court by the parties since in substantial part the briefs below were directed to this issue and it was the primary ground of the decision of the Board; the Board adverted to the alleged single employer status of Darlington and Deering Milliken and its affiliated corporations only as an additional and independent ground for its order after it had concluded in the body of its opinion that Darlington alone had violated the statute by closing down its mill.

In approaching this question the Court of Appeals assumed the correctness of the Board's findings as to the motives underlying Darlington's decision to liquidate without determining whether those findings were supported by substantial evidence (Bd. Pet. 25-6). On this basis the court held that even though "unionization also played a part in the resolve to close", Darlington did not violate the Act by closing its plant permanently and withdrawing from business.

Having thus determined that as a matter of substantive law there had been no violation by Darlington the court then held that since Darlington had not violated the Act there was no liability which could be extended to Deering Milliken on the basis of the single employer or any other doctrine (Bd. Pet. 29). This holding did not deal with the substantive question of whether there had been a violation of the statute by Deering Milliken but solely with the remedial question whether liability for a violation committed by Darlington could be imposed upon Deering Milliken. At this point in its opinion, the court then added one sentence which the Board in its petition construes as a broad holding that in all circumstances an employer who owns several plants may permanently discontinue operations in one plant even though he does so to avoid bargaining with a union. As we shall show in the next section of this response, this is an erroneous characterization of the opinion below. Whatever effect is to be given to the relevant sentence in the opinion of the Court of Appeals, it is at most simply a statement that, in the Court's view, no matter what the general rule may be with respect to the permanent closing of one of several plants owned by one employer, there were particular circumstances in the instant case which justified the conclusion that the closing of Darlington's only plant and the liquidation of its business did not violate the statute.

ARGUMENT

I. The Question That the Board Asserts Is Presented by This Case Was Not Decided by the Court Below and the Questions That Were Decided by That Court Do Not Warrant Review

The Board contends that the Court below decided as a matter of general principle that in all circumstances an em-

ployer who operates several plants does not violate the Act if he closes permanently one of his plants to avoid bargaining with a union. Analysis of this argument should begin by reference to the sentence in the opinion of the court below which the Board says is susceptible of this construction. That sentence follows:

> "Furthermore, even if Darlington was a division of Milliken, the transfer of Darlington's liability to Milliken upon a single employer principle is precluded because, as we have stated, a part like the whole of a business may be abolished *when the extinction is consummated in circumstances like the present.*" (Bd Pet. 29, emphasis supplied)

Neither in this sentence nor elsewhere in its opinion did the court below assume *arguendo* the validity of the Board's conclusions and findings on the question whether Darlington, Deering Milliken and the affiliated mills were to be regarded as a single employer. This is in sharp and significant contrast to the court's method of approach elsewhere in its opinion. It did make assumptions *arguendo* with respect to the validity of the Board's findings on the question of Darlington's motives for closing its mill and liquidating its operations. The "even if" clause in the sentence quoted above is therefore entirely hypothetical in the sense that it makes no assumption as to the validity of the Board's conclusions and findings and, even as a hypothesis, it is confined to Darlington being "a division of Milliken".

The conclusions and findings of the Board with respect to the relationship between Darlington and the affiliated companies other than Deering Milliken are not even mentioned in this sentence. In fact, it is conceded by the Board (Pet. 10, n. 6a) that the court below did not attempt to review those findings. There is thus a basic difficulty in

regarding the sentence as necessary to the Court's decision because its force depends upon facts hypothesized but not found. So viewed the sentence is dictum and cannot establish a principle appropriate for review by this court.[11] If this is a correct reading of the sentence, it merely reflects the view of the Court of Appeals that the only question before it were whether Darlington itself violated the act by closing down its one plant for the purpose of avoiding bargaining with the union and, if that question should be answered in the affirmative, whether as a matter of remedy Deering Milliken could be held liable for the violation committed by Darlington. Support for this reading of the sentence can be found in the fact that the entire passage in which it occurs appears to be cast as much in terms of remedial law as in terms of the substantive question whether there had been a violation of the statute.

But even if the sentence is regarded as representing some kind of a holding on the substantive question of violation the sentence is confined by its very terms to "circumstances like the present". At best, therefore, the force of the sentence is confined to the particular and peculiar facts here involved and does not lay down any general principle of law. Viewed in this light the sentence simply expresses the view of the Court of Appeals that even if there is a general principle of law that an employer who owns several

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[11] "It follows that a conclusion based on a fact the existence of which has not been determined by the court, cannot establish a principle. We then have what is called a dictum. If, therefore, a judge in the course of his opinion suggests a hypothetical fact, and then states what conclusion he would reach if that fact existed, he is not creating a principle." Goodhart, *Determining the Ratio Decidendi of a Case*, in JURISPRUDENCE IN ACTION (1953) 193, 218. See also *Noel* v. *Oldis*, 138 F. 2d 581, 586 (D. C. Cir. 1943); *Brush* v. *Commissioner*, 300 U. S. 352, 373 (1937); and as to the non-reviewability of lower court dicta see *Stickel* v. *United States*, 1. L. Ed. 2d 30 (Harlan, J.), *cert. den.* 352 U. S. 882 (1956).

plants may in some circumstances violate the statute if he closes down one of the plants to avoid bargaining with the union that principle has no application to the particular facts presented in this case. To attribute any broader meaning to the sentence would involve the unwarranted assumption that the Fourth Circuit was overruling its earlier decisions in which the court held that employers could not evade their statutory obligations by ruses that did not constitute an entire, bona fide and irrevocable withdrawal from business.[12]

There are particular circumstances involved in this case, adverted to in the opinion of the Court of Appeals, which we submit would justify the conclusion that any general principle of law of the kind described above should not be applied here. Thus, the court below referred to the fact that the closing down of the plant by Darlington, the dissolution of the corporation and the liquidation of its affairs were permanent, not merely a gesture but an actuality (Bd. Pet. 26-7), and that these actions meant that the owners of the corporation (who included 200 persons unconnected with the Milliken family and owning 31% of the stock) had "forfeited the penalty" that follows from complete withdrawal from business (Bd. Pet. 29). Furthermore, the court emphasized in its opinion a second and related point: the business conducted by Darlington was not transplanted elsewhere, the case did not involve a "run-

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[12]In *N. L. R. B.* v. *Gibraltar Industries, Inc.*, 307 F. 2d 428 (1962), *cert. den.* 372 U. S. 911 (1963), the Fourth Circuit enforced a Board order holding that a selling company and a manufacturing company were together a single employer so that each was jointly and severally liable for the unfair labor practices of the other. Similarly, it had held that an employer may not temporarily shut down its operations to avoid bargaining (*N. L. R. B.* v. *Norma Mining Corp.*, 206 F. 2d 38), or subcontract out work to any employer for the same reasons (*N. L. R. B.* v. *Preston Feed Corp.*, 309 F. 2d 346 (1962)).

away" plant, the business formerly conducted by Darlington was not being conducted in other firms and was "not hidden among the other Milliken corporations". The court, having referred to the findings of the Trial Examiner on these points, added that "no disagreement with this finding was, or on substantial evidence could have been, expressed by the Board" (Bd. Pet. 27).[18]

It should also be observed that the court below specifically referred to the fact that the Board acknowledged and the Trial Examiner had found that there were economic considerations sufficient in themselves to support the decision of Darlington to terminate operations, even though the Court assumed *arguendo* the correctness of the Board's findings that the decision to close the plant was the result of the Union victory in the representation election (Bd. Pet. 25-6). The fact that there were acknowledged economic considerations sufficient to justify the closing of the Darlington plant is in itself a circumstance that suggests doubt as to the propriety of applying in this particular case any general principle that may exist with respect to the statutory obligations of an owner of multiple plants. The contrary argument advanced by the Board would not only make the question of statutory liability turn entirely on the subjective test of motive but would also seem at least to approach the position that once the mind of an employer owning multiple plants is infected by any degree of improper purpose in respect of unions the Act requires him to con-

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[18]The Trial Examiner specifically found that the business of Darlington after its dissolution had not been transferred to the so-called affiliated companies and noted that the evidence of post closing transfer was of special significance, for in a true chain such transfer "would naturally and almost automatically occur" (JA-177). The Board did not find to the contrary, and inferentially approved by its blank adoption of the Examiner's findings "consistent with" the Board's order (JA 4).

tinue uneconomic operations until receivership or bankruptcy ensues.

It is also significant that the Court of Appeals noted that Deering Milliken (which was the nexus used by the Board to establish a relationship between Darlington and the so-called affiliated corporations) did not own any plants and was not engaged in manufacturing at the time that the alleged violation occurred and that the basis for the relationship between Darlington and the other so-called "affiliated corporations" which did own and operate plants at the time of the alleged violation, was the stock ownership and the alleged control of the members of the Milliken family (Bd. Pet. 23). This, of course, ignored the interests of the minority (non-Milliken) stockholders which ranged from 31% for Darlington to 44% for Monarch Mills (which was functionally nearest to Darlington) and 45% for Hartsville (which was geographically closest). In these circumstances even if it is assumed that the Darlington plant was "a division" of Deering Milliken and thereby related to some entity imprecisely described by the Board as the "affiliated corporations", or "the Milliken family" or the "Deering-Milliken complex" (Bd. Pet. 23-4), there are valid reasons for concluding that any general principle relating to the obligations of an owner of multiple plants should not be applied for the purpose of determining whether the closing of the Darlington plant was lawful.

The particular circumstances described in the preceding paragraphs are all peculiar to this case. Comparable circumstances did not exist in the other cases arising under the Act that are referred to in the Board's petition, or in any other case decided since the enactment of the statute. Therefore, the opinion of the court below, holding that Darlington did not violate the Act in closing its plant in the particular circumstances here involved, does not lay down

any principle of general application that will have any controlling significance in other cases involving the obligations of multi-plant employers under the Act.

Such a holding would not in any sense conflict with decisions of other circuit courts of appe The two cases cited in the Board's petition as representing "conflicts in principle" (Bd. Pet. 15)—*N. L. R. B.* v. *Missouri Transit Co.*, 250 F. 2d 261 (8th Cir. 1957), and *N. L. R. B.* v. *Savoy Laundry, Inc.*, 327 F. 2d 370 (2d Cir. 1964)—involved, as the Board's petition shows, facts so radically dissimilar from those here involved that no conflict, either in specific terms or in principle, is involved.

In summary, it may be said that the essence of the holding of the Court of Appeals was that Darlington did not violate the Act by permanently closing down its plant and liquidating its affairs even if those actions were occasioned in part by the unionization of the plan and that, since there was no violation of the statute by Darlington, there was no liability to be extended to Deering Milliken. The Board's petition does not contest the correctness of these holdings or ask that they be reviewed. To the extent that the opinion below can be regarded as dealing with the further question whether an employer who owns several plants may close down one of them to avoid dealing with a union, at most the opinion can be regarded as stating simply that *in the particular circumstances of this case* the action of Darlington in closing its mill and dissolving did not violate the statute even if Darlington "was a division of Milliken". On the particular facts here involved such a holding would be clearly correct and would have no application beyond the specific situation here involved. This case therefore does not raise the general question which the Board in its petition seeks to have reviewed nor does the case provide an appropriate occasion for determination of that question.

II. The Union's Petition in No. 846 Should Be Denied

A. There Was Not a Timely Filing of the Petition

The Fourth Circuit handed down its decision on November 15, 1963. The Union's petition for certiorari was not filed until February 17, 1964, more than ninety days after the decision. Therefore, that petition is not timely. 28 U. S. C. § 2101(c); Rule 22(3).

The court's action on November 15, 1963 directed that the enforcement of the Board orders be denied. It settled with finality the legal rights and obligations of the parties. It was not tentative, informal or incomplete. It put to rest all the questions that the parties had litigated. It left no ambiguity on any point to be settled at a later date, *cf. United States* v. *F. & M. Schaefer Brewing Co.*, 356 U. S. 227 (1958), nor did it remand any question to the Board for further consideration. While the Union says that on November 19th the court "denied enforcement" (Pet. 4), clearly this occurred on November 15th.

Nor does it matter that the Fourth Circuit delayed the entry of its several decrees to November 19, 1963. They were only the signing of formal orders involving no exercise of discretion. Events subsequent to a final decision do not toll the time for review when they are mere formalities. *Delta Drilling Co.* v. *Arnett*, 186 F. 2d 481 (6th Cir. 1950), *cert. den.* 340 U. S. 954 (1951). Otherwise, parties could delay review indefinitely by a variety of post-decision actions that do not affect the matters to be dealt with on review.

The November 19th decree did not materially alter any matter of substance or resolve any ambiguity in the decision. In fact, it made no revision whatsoever in the prior decision. *Cf. Fed. Trade Comm.* v. *Minneapolis-Honeywell Co.*, 344 U. S. 206, 213 (1952). The Union was bound by

the pragmatic test of finality that this Court has consistently followed (see *Brown Shoe Co.* v. *U. S.*, 370 U. S. 294, 306 (1962), and *Minneapolis-Honeywell Co., supra,* at 212). Under this test, the November 15th action was the final adjudication, which in turn began the ninety-day period within which a petition for certiorari must be filed.

The construction here advocated is consistent with that of the Solicitor General, both in this case[14] and others.[15] However, the Solicitor General in his response to No. 846 has not raised the question of timeliness.

B. The Union's Petition Presents No Questions That Warrant Review by This Court

The Union's petition in No. 846 seeks to raise the same general and abstract question sought to be presented by the Board's petition in No. 874. For the reasons that have been stated above in relation to the petition of the Board, we submit that this question does not warrant the issuance of the writ.

The Union's petition also seeks to raise the question whether Darlington, considered alone, violated the statute by closing down its plant and dissolving its existence in order to avoid bargaining with the Union. On the basis

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[14]His application for extension of time to file the Board's petition in this case describes the action of the Court below, entered on November 15, 1963, as "the judgment" and computes the ninety day period from that date: "The time for filing a petition for a writ of certiorari, unless extended, will expire on February 13, 1964."

[15]In *Local 3* v. *N. L. R. B.*, No. 700, October Term 1960, *cert. den.* 365 U. S. 845, the Board through the Solicitor General took the position that the union's petition for certiorari was not timely because it was not filed within ninety days after the decision, although the decree enforcing the Board order (with modifications) had been entered within ninety days. See STERN & GRESSMAN, SUPREME COURT PRACTICE (3d ed. 1962) § 6-2, p. 203.

of the legislative history of the statute and the decisions of this and other courts, we believe that the holding of the court below on this point was clearly correct and raises no recurring question of public importance deserving of review by this Court. In fact, the Solicitor General in his memorandum in No. 846 takes the position that the Union's petition should be denied insofar as it seeks to raise this question (p. 3).

The Union further seeks to raise a question as to the propriety of the Board's remedial order in this case, requesting, among other things, an order requiring Darlington to reopen its plant and to reestablish its business (pp. 3, 19). Contrary to the suggestion made in the Board's petition (p. 2), Deering Milliken does not intend to raise in this Court at this time the question of the form of the remedial order. The form and content of that order were not considered by the Court of Appeals. The order raises questions of fact and law which we submit should initially be considered by the Court of Appeals in accordance with the provisions of § 10(f) of the Act.

The Union also seeks to raise the question (p. 19) whether the Board properly dismissed the complaint against Roger Milliken personally. The Union's contentions on this point have been found to be without merit by five members of the Board (JA 29-30) and by five circuit judges (Bd. Pet. 29). We agree with the view expressed by the Solicitor General in his memorandum (p. 4) that this holding turns on the facts of the particular case and is not of sufficient importance to warrant review by this Court.

CONCLUSION

For the foregoing reasons, the petitions for a writ of certiorari should be denied.

Respectfully submitted,

STUART N. UPDIKE
JOHN R. SCHOEMER, JR.
Attorneys for
Deering Milliken, Inc.

JOHN LORD O'BRIAN
HUGH B. COX
Of Counsel

March 27, 1964

APPENDIX A

STATUTES

Additional relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U. S. C. §§ 151 et seq.) are as follows:

Sec. 10. * * *

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from unfair labor parctice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: Provided, that where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: * * * No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practices in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. * * *

The statute governing the time within which the petition for certiorari may be filed is the following (63 Stat. 104, 28 U. S. C. § 2101):

§ 2101. * * *

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

Decrees Below

In addition to the decree appearing at Board Petition pp. 46-47, the following decrees were also entered below.

UNITED STATES COURT OF APPEALS

For the Fourth Circuit

No. 8790.

Darlington Manufacturing Company and Deering Milliken, Inc.,
Petitioners,

versus

National Labor Relations Board,
Respondent.

Textile Workers Union of America, AFL-CIO,
Intervenor.

On Petition to Review and Set Aside Order of the National Labor Relations Board.

This cause came on to be heard upon the petition of Darlington Manufacturing Company and Deering Milliken, Inc., to review and set aside an order of the National Labor Relations Board of October 18, 1962, issued against said Darlington Manufacturing Company, Darlington, South Carolina; Deering Milliken and Company, Inc., New York, New York, and Deering Milliken Company, Incorporated, New York, New York, their officers, agents, successors and assigns in proceedings before said Board known upon its records as Case No. 11-CA-1292; upon the answer of said Board and cross-petition for enforcement, and upon the certified list in lieu of a transcript of the record; and said cause was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth Circuit, that the said order of the National Labor Relations Board be, and the same is hereby, set aside.

FILED
Nov 19 1963

MAURICE S. DEAN
CLERK

CLEMENT F. HAYNSWORTH, JR.
United States Circuit Judge.

HERBERT S. BOREMAN
United States Circuit Judge.

ALBERT V. BRYAN
United States Circuit Judge.

I dissent:

J. SPENCER BELL
United States Circuit Judge.

I concur with the dissent:

SIMON E. SOBELOFF
Chief Judge, Fourth Circuit.

A true copy,

Teste:

Maurice S. Dean, Clerk,
U. S. Court of Appeals for
the Fourth Circuit

By Margaret L. Davis,
Deputy Clerk

UNITED STATES COURT OF APPEALS

For the Fourth Circuit

No. 8906.

National Labor Relations Board,
Petitioner,

versus

Deering, Milliken and Company, Inc.,
Respondent.

On Petition for Enforcement of an Order of the National Labor Relations Board.

This cause came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order issued by it against Deering, Milliken and Company, Inc., its officers, agents, successors, and assigns on the 18th day of October, 1962, in a proceeding before said Board known upon its records as Case No. 11-CA-1071; upon the certified list in lieu of a transcript of the record; the answer of the respondent; the response of the National Labor Relations Board to the answer to petition for enforcement; and the said cause was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth Circuit, that the said petition for enforcement be, and the same is hereby, denied.

Filed
Nov 19 1963

Maurice S. Dean
Clerk

Clement F. Haynsworth, Jr.
United States Circuit Judge.

Herbert S. Boreman
United States Circuit Judge.

Albert V. Bryan
United States Circuit Judge.

I dissent:

J. SPENCER BELL
United States Circuit Judge.

A true copy,

Teste:

Maurice S. Dean, Clerk,
U. S. Court of Appeals for
the Fourth Circuit

I concur with the dissent:

SIMON E. SOBELOFF
Chief Judge, Fourth Circuit.

By Margaret L. Davis,
Deputy Clerk

APPENDIX B

The Relationship Between Darlington and Deering Milliken

The Darlington-Deering Milliken relationship came under scrutiny as a result of the Board's 1957 remand order (*supra*, p. 7). The hearings were preceded by extensive examination of the documents in Darlington's and Deering Milliken's files: from tens of thousands examined, the Board's General Counsel and Union counsel selected well over a thousand for copying, and from these introduced about 400 as exhibits at the hearings. The Trial Examiner in his report reduced this to about 175, identified in the Report as lending the greatest support to the single employer concept for which the Board's General Counsel was arguing. As a result, the report, far from being a balanced study of the relationship—for by this technique it never referred to any documents *unfavorable* to the single employer contention—presented the case for the Board's General Counsel in the strongest possible light. Yet the Examiner concluded that the relationship between the two companies was of interdependence, but not of control, either in the area of Darlington's operations or of its labor relations.

The two dissenting members of the Board agreed with the Trial Examiner's conclusion.

This is not the occasion for any comprehensive review of the single employer topic; the evidence and arguments on this topic took up over 75% of the record before the Board. But we shall try to demonstrate, within the few pages that follow, that the Board is not now justified in assuring this Court that three Board members were "plainly cor-

rect" (Pet. 2, n. 2), and the Trial Examiner and two Board members plainly incorrect, in their decision on this issue.

A. The Darlington-Deering Milliken Relationship

Organized in 1883, with a plant built before 1900, Darlington in 1956 was producing carded cotton print cloths in a highly competitive branch of the textile industry. It was a marginal producer; when its directors and stockholders voted its dissolution in October of that year, Darlington was on the threshold of a period of operating losses.

Deering Milliken was organized in 1865 (JA 1341). It operated as a sales agent for various textile mills and factored their accounts receivable, a common arrangement in the industry. When Darlington was forced into reorganization during the 1930s, Deering Milliken, its largest creditor, was issued 41% of Darlington's common stock for its debt (JA 391, 1309-10). This percentage remained unchanged until 1956, but in the intervening years the Milliken family bought additional shares. By 1956 the family directly or indirectly owned a majority of both Deering Milliken and Darlington. But 31% of the latter's shares were publicly held by 200 persons unconnected with Milliken (JA 1310, 432), and three-quarters of the minority holdings were represented at the meeting at which Darlington's liquidation was voted; only 3,000 shares (2%) were voted in opposition (Tr. 855).

The minority interests were even larger at the mills which would have most directly felt the impact of the Board's preferential rehiring order: Monarch (44%), another print cloth mill like Darlington, and Hartsville (45%), which was only 14 miles away.

Oeland was Darlington's treasurer, the job that in textile mills is usually the principal operating executive. Under the bylaws, he was charged with the "general business of the company" (JA 1130, 1237). He came to Darlington with thirty years' experience in textiles, the last eleven with Deering Milliken mills (JA 1189-91). When he was offered the Darlington job, Roger Milliken, the president, told him that he would be in complete charge, and this promise was faithfully kept.

Oeland was no "paper" executive. His responsibility for the Darlington operation was reflected in his compensation arrangement, which gave him 2% of the mill's net profit (Tr. 1743). He alone administered Darlington's affairs, setting up bank accounts and signing the checks (JA 1140), handling stockholder relations and share transfers (with the help of local counsel) (JA 591, 1141), and establishing Darlington's internal accounting procedures (JA 1194, 590), all without aid or instructions from Deering Milliken. *All* the hiring and firing of employees was done by him alone (JA 120). Wage rates at the mill were fixed by him alone (he gave a 1955 increase of 3.75¢, as against the 5¢ average at other Deering Milliken mills, JA 1204-07, 3502).

Darlington's employees were never told they were employed by Deering Milliken. Thus Darlington issued a handbook to new employees describing their company. An organization chart showed the treasurer (Oeland) at the apex; the president (Roger Milliken) was not included. (The president of a textile mill often functions like a chairman of the board in an ordinary company, JA 583). The book made no reference to Deering Milliken, except as "our selling agent", "which sells the goods we produce" (JA 1237-39).

It is not contended that these mills were strangers to each other or to Deering Milliken. Pooling of efforts among

the mills for their mutual good were commonplace.[1] But the Darlington-Deering Milliken relation fell far short of the standards required for application of the Board's single employer rule.

B. Deering Milliken's Control of Darlington

In its discussion of Deering Milliken's liability (in that section of the report captioned "The Remedy") the Board found that Deering Milliken controlled Darlington as to both operations and labor relations (JA 25). Its petition omits any discussion of operational control, but alleges that "Roger Milliken exercised ultimate control over the labor relations" (p. 4; *cf.* the Board's finding that control was exercised by "Deering Milliken, primarily through the person of Roger Milliken", JA 25).

Labor relations control is conceded by the Board to be the "crucial area" in a single employer case (JA 24-25). It is the *only* area where the Board's expertise can be usefully employed, for a Board finding that one business corporation exercised operational and business control over another does not "carry the authority of an expertness which courts do not possess and therefore must respect."[2]

Conceding that the details of "day-to-day personnel relations" were left to the mills, the Board found that the "major decisions" were handled by Roger Milliken, and accordingly "Deering Milliken must assume responsibility for control of Darlington's labor relations" (JA 25). While the Board's petition omits details and contains only a con-

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[1] *E.g.*, the mills helped support a program for joint college recruiting for supervisory trainees, but interviewers were told to stress that Deering Milliken was the sales agent and that "Mills have kept corporate identities and operate as separate units, therefore we have advantages of large and small organization" (JA 1642).

[2] *Universal Camera Corp.* v. *N. L. R. B.*, 340 U. S. 474, 488 (1951).

clusory fact statement, a string of record references is appended (p. 4), to give the impression that the finding is supported by a wealth of record evidence. These are considered in the margin.[3]

Neither the documents nor the testimony of others contradicted Oeland's statement that he never discussed Darlington's labor relations with anyone outside the company (JA 1199-1202). When union organizers appeared, Oeland telephoned Roger Milliken to inform him of this, and thereafter told him once or twice how the campaign was going. But Roger Milliken was absent from South Carolina during the six weeks preceding the election (JA 1092).

It is not suggested that Darlington welcomed the Union, or that it operated under a labor relations policy from which any tinge of union hostility was absent. But in this respect it was not unique; as the Trial Examiner noted,

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[3]Out of thousands and thousands of documents examined by the Board, and the extensive testimony of Deering Milliken witnesses, the Board had to rest its "crucial" finding of labor relations control on the following instances:

JA 1013-20: The mill treasurers met jointly to discuss a general wage increase to match one recently offered by Burlington; Roger Milliken was present. (But Oeland decided to give a smaller increase at Darlington than the other treasurers decided.) JA 1072-73: Oeland advised Roger Milliken of steps taken to reduce personnel; the latter was interested because this meant a reduction in costs, important to a mill in Darlington's difficult competitive situation. JA 1086-89: Oeland tells Roger Milliken of miscellaneous personnel actions he plans to take (and in one case asks prior approval, probably not given). JA 1274: Newspaper article reporting wage increases for Deering Milliken and other mills. JA 1679-81: Supervisory training program for college students. JA 1694-99: Supervisory meeting to discuss size of weave room work force. JA 1711-17: Management meeting to control costs by reducing jobs. JA 1730-31: Informing employees of replacement cost of equipment. JA 1735: Suggestion that mills employ trained plant engineer. JA 1740: Requesting report on number of employees averaging less than 40 hours weekly. JA 1748-53: Report on visit to competitive mill and possible cost reduction methods. JA 1757-1811; 1824-59: Miscellaneous documents, principally letters and reports from Oeland.

"the policies followed here reflected those at many other and adversely owned mills in the South. It has not been claimed that community of policy among all mills in the area creates a single employer status among them" (JA 201).

C. Darlington's "Actual, Unfeigned and Permanent" Closing

This is the language used below (Bd. Pet. 26). The court found:

> "No ruse or subterfuge is suggested here. Darlington's was an absolute desistence, not a temporary intermission as apparently was contemplated in *N. L. R. B.* v. *Norma Mining Corp.*, 206 F. 2d 38 (4 Cir. 1953). There was no provisional lockout, the mill was not transplanted elsewhere, and its sale was concededly entire, bona fide and irrevocable. The Trial Examiner demonstrated beyond debate that Darlington was not a 'runaway' plant—that is, a plant having another existence in another form—finding that Darlington was not hidden among the other Milliken corporations. No disagreement with this finding was, or on substantial evidence could have been, expressed by the Board."

But now the Board disregards this holding and attempts tangentially to raise the question whether Darlington really closed, by asserting that the other mills "increased their sales to Darlington's customers" after Darlington's closing (Pet. 7).

The evidence is extensive, and only the salient points can be touched on. Between 1956 (the year Darlington closed) and 1957, there was a reduction in the number of spindles at the cotton mills selling through Deering Milliken; spindle activity also dropped at a rate greater than the industry generally (JA 954-55). The ten largest cus-

tomers of Darlington bought 9,000,000 yards less from Deering Milliken in 1957 than in 1956 (JA 959-60). A staple cloth that one large customer had been buying could not be offered after Darlington closed, and it was six months before Monarch Mills started to produce this cloth and compete for the business (JA 951-956). The other Deering Milliken cotton mills increased their production of cotton yarn in 1957, but only according to increases normally resulting from the installation of new high-speed equipment; there was no increase attributable to Darlington's disappearance (JA 954).

It is true, as the Board says, that several of Darlington's unfulfilled contracts were assumed by other Milliken mills, but neither the Board nor the Court seems to have attached any significance to this. To avoid keeping his mill in partial operation to run out a few long-term contracts, Oeland resorted to such devices as (a) paying a customer a penalty to secure a cancellation (Tr. 2835), and (b) persuading the other Milliken mills to take on the contracts, generally with a cash bonus to compensate them for intervening market increases. On some of these contracts, Oeland tried first to interest non-Milliken mills, but did not succeed (JA 177, 1212; Ex. C-19; Tr. 2910).

In the words of the court below, the sale of Darlington's business was "entire, bona fide and irrevocable" (Bd. Pet. 27). This finding leaves no room for any conclusion that Darlington was a runaway plant, which only ostensibly disappeared but in reality distributed its customers among the surviving plants. Moreover, it destroys the implication in the Board's question that the closing of a plant caused no economic injury to the "employer who owns several plants" because of absorption of the lost business by the remaining plants.

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Supreme Court of the United States

October Term, 1964

No. 71

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

DARLINGTON MANUFACTURING COMPANY, DEERING MILLIKEN COMPANY, INC., DEERING, MILLIKEN AND COMPANY, INC., and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO.

No. 37

TEXTILE WORKERS UNION OF AMERICA,
Petitioner,

v.

DARLINGTON MANUFACTURING COMPANY, DEERING MILLIKEN COMPANY, INC., DEERING, MILLIKEN AND COMPANY, INC., and NATIONAL LABOR RELATIONS BOARD.

BRIEF OF DARLINGTON MANUFACTURING COMPANY IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI

THORNTON H. BROOKS,
Attorney for Darlington Manufacturing Company,
440 West Market Street,
Greensboro, North Carolina.

INDEX

	PAGE
Jurisdiction	1
Statement	2
Factors Causing Call of Directors' Meeting	3
Board of Directors' Meeting on 12 September	4
Profit performance	4
Loss of traditional markets	5
Foreign imports and exports	5
Low market price for its products	5
High manufacturing costs	5
Future cost of improvement-modernization program	6
Mill failures in the textile industry	6
Increased costs upon advent of Union	6
Stockholders' Meeting on 17 October	7
Decisions of the Board and the Court Below	8
Argument	10
I. The Decision of the Court Below Denying Enforcement of the Board Orders on the Ground that Darlington's Permanent and Total Discontinuance of Business Was Not an Unfair Labor Practice Was Clearly Correct and Presents No Questions Cognizable under Rule 19 of the Rules of This Court	13
II. There Is No Conflict of Decision	16
III. There Is No Important Question of Federal Law	17
Conclusion	18

Citations

Cases:	PAGE
Fibreboard Paper Products Corp. v. National Labor Relations Board, 138 NLRB 550, 322 F. 2d 411, cert. granted 375 U. S. 963	17
Helvering v. Goweran, 302 U. S. 238 (1937)	15
Local 3 v. NLRB (No. 700, October Term, 1961), cert. den. 365 U. S. 845	2
Myers Ceramic Products Co., 140 N.L.R.B. 232, (December 1962)	16n
NLRB v. J. M. Lassing, d/b/a Consumers Gasoline Station, 284 F. 2d 781 (C. A. 6), cert. denied 366 U. S. 909	16n
NLRB v. Kingsford, 313 F. 2d 826 (6 Cir., 1963)	16
NLRB v. New England Webb, Inc., 309 F. 2d 696 (1 Cir., 1962)	16
NLRB v. Pittsburgh S. S. Company, 340 U. S. 298 (1951)	15
NLRB v. Rapid Bindery, Inc., 293 F. 2d 170 (C. A. 2)	16n
National Labor Relations Board v. Missouri Transit Company, 250 F. 2d 261 (8 Cir.)	16n
NLRB v. Savoy Laundry, Inc., No. 28119 (C. A. 2) (January 1964)	16n
Southport Petroleum Co. v. NLRB, 315 U. S. 100 (1942)	14

IN THE

Supreme Court of the United States

October Term, 1963

No. 874

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

DARLINGTON MANUFACTURING COMPANY, DEERING MILLIKEN COMPANY, INC., DEERING, MILLIKEN AND COMPANY, INC., and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO.

No. 846

TEXTILE WORKERS UNION OF AMERICA,
Petitioner,

v.

DARLINGTON MANUFACTURING COMPANY, DEERING MILLIKEN COMPANY, INC., DEERING, MILLIKEN AND COMPANY, INC., and NATIONAL LABOR RELATIONS BOARD.

BRIEF OF DARLINGTON MANUFACTURING COMPANY IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI

Jurisdiction

Upon the statement of the Solicitor General that the Chief Justice timely extended the time for filing the Board's Petition in No. 874, it is conceded that the jurisdictional requisites are adequately set forth in that Petition.

However, the Petition of the Union in No. 846 was untimely and therefore the jurisdictional requisites are lacking in that Petition. The Union's Petition was filed ninety-four days after the decision of the court below. 28 U. S. C. 2101(c), and Rule 22(3) of this Court. Cf. Memorandum of Board in *Local 3* v. *NLRB* (No. 700, October Term, 1960), cert. den. 365 U. S. 845. As the Union in No. 846 has failed to apply for a writ of certiorari within the prescribed time, and, as the period for applying for a writ of certiorari was not extended by a Justice of this Court, its application should be denied.

Statement

The decision of the court below that the permanent and total discontinuance of Darlington's only plant was not an unfair labor practice was clearly correct and presents no questions cognizable under Rule 19 of the Rules of this Court, it does not conflict in any manner with the decision of any court of appeals, and it does not present any important question of federal law. In order to demonstrate that the decision below turns upon its own particular facts and that it can affect only a few others than the Union and this respondent, it is necessary to set forth some essential facts which have been omitted in both petitions.

Respondent Darlington was chartered in 1883 under the laws of South Carolina, and operated in the town of Darlington a cotton goods plant that had been built prior to 1900. Its peak employment was 550 production employees. It did not own or operate any other plant. During the depression years of the 1930's it lost considerable sums of money and was in constant debt to its selling agent, Deering, Milliken & Co., Inc. In 1937, Darlington was put through bankruptcy in a Section 77B proceeding and Deering Milliken, Inc., then acquired approximately 41% of the common stock of Darlington in satisfaction of its debt. At the time of

Darlington's liquidation in October 1956, its 150,000 shares were owned by:

Deering Milliken & Co., Inc.	41.4%
Cotwool Manufacturing Corp.	18.3
Roger Milliken and members of his immediate family	6.4
Directors and employees of Deering Milliken & Co.	2.9
Outsiders or non-Milliken family or interests (about 100 stockholders living in South Carolina, 50 in New York, and more than 50 scattered over the United States)	31.0
	100.0%

Darlington earned a small amount of money in each year during World War II. From 1952 through 1956 it earned comparatively little, experiencing for those years a return of only 2.8% on its average invested capital, a percentage which was considerably lower than that experienced by its competitors.

A Board-ordered election was held on 6 September 1956 at which time 258 votes were cast for the Union, and 252 votes against it. On 11 September, Darlington filed objections to the election.

Factors Causing Call of Directors' Meeting

On 7 September the results of the election were telephoned by long distance to Roger Milliken, president of Darlington, by James M. Oeland, its "chief active or operating executive" (J.A. 120). Milliken then reviewed the entire Darlington situation from the standpoint of its future possibilities of making a profit. He considered the loss of Darlington's traditional market for its cloth with the consequent necessity of entering into the highly competitive standard print cloth constructions; the import-export prob-

lem; the prevailing low market prices for its goods which would project a loss of $250,000 for the ensuing year unless there was an upward change; the necessity to air condition the plant at a cost of $800,000; and the belief that the minority employee resistance group had now become a majority which would prevent management from going ahead with the work assignment changes and its modernization program. Milliken thereupon called the directors who lived out of the state and reviewed with them the foregoing adverse factors facing the company and they all agreed that a directors' meeting should be held as soon as possible.

Board of Directors' Meeting on 12 September

The board of directors met on 12 September pursuant to the call of the president and was attended by all seven directors. The directors reviewed the economic factors facing Darlington:

Profit performance. Oeland reported to them that he estimated the results for the 1956 fiscal year ending in November "would show a loss of $40,000, the first loss since the 1930's" (J.A. 427). The ratio of Darlington's earnings to its invested capital during the preceding five years had been:

1952	1½%
1953	8%
1954	2%
1955	3%
1956	.6% [1]

[1] The projected loss of $40,000 was based on orders that Darlington had taken at the lower prices prevailing in May-July and on the price of cotton purchased and the labor cost per pound. The subsequent decision by the stockholders to liquidate the corporation resulted in certain transactions such as the sale of goods, materials, etc., which converted this projected loss into an actual profit for 1956 of $27,160.49. If the plant had not been liquidated and the projected loss of $40,000 for 1956 actually realized, the ratio of earnings to invested capital for that year would have amounted to a red percentage of 1%.

Darlington's 2.8% ratio average for these five years compared with an 8% ratio for its competitors in the textile industry.

Loss of traditional markets. In the early 1950's, which were its profitable years, Darlington specialized in producing "fancies" but by mid-1956 this business had almost entirely disappeared, and in order to stay in business it had become necessary to enter the field of standard print cloth constructions, or "staples," a field where it had to compete with the largest and most efficient mills in the textile industry which were making these kinds of products in tremendous volume at costs considerably below those of Darlington.

Foreign imports and exports. The adverse effect of Japanese cottons imported into the United States beginning in 1954 and surging upward in 1955 became, and continues to be, a national issue and was a very real problem to Darlington in 1956. Also, the export market for United States textiles had progressively deteriorated.

Low market price for its products. From January to September 1956 there had been a serious downward trend of print cloth prices, without a corresponding decrease in the price of raw materials or manufacturing costs. This decline in prices amounted to approximately a cent a pound for the first six months of 1956, the mill margin per pound having dropped from about 37¢ in January 1956, to approximately 31¢ in September. The break-even point for Darlington, reached in the early months of 1956, was about 34¢ per pound. Hence a drop of 1¢ per pound in the mill margin, at Darlington's annual rate of approximately 8,000,000 pounds of production, meant a decrease in Darlington's gross revenues of $80,000; and if the drop was 3¢ per pound for a full 12 months' period it would result in a decrease in Darlington's gross income of $240,000 a year.

High manufacturing costs. In mid-1955 Darlington engaged an independent textile engineering firm to make a survey of the plant's operations relative to its efficiency,

costs of operations, etc. The report confirmed the fact that Darlington was not competitive, and recommended that certain steps be taken to increase the efficiency of the plant but these were not placed into effect because of the physical condition of the old building.

Future cost of improvement-modernization program. Although considerable expenditures had been made prior to 1956 in an effort to modernize the plant, yet it was pointed out at the directors' meeting that, among other needs, the plant should be air conditioned at a cost of $800,000; additional high-speed looms should be purchased at a cost of $1,500 each; and additional building space for these looms should be constructed at a cost of $400,000.

Mill failures in the textile industry. The directors were aware of the high attrition in the industry, knowing that in the twelve months prior to 30 June 1956, 400,000 spindles had been liquidated, or the equivalent of approximately nine mills of the size of Darlington.

Increased costs upon advent of Union. The Union's literature and promises to the employees were designed to further aggravate the economic plight of Darlington. For example, the Union's letter to the employees in September 1956 states that they "need to do something about changing" the work load adjustment system, which they term the "s-t-r-e-t-c-h o-u-t," and that a vote for the Union in the election "will be the first big step towards changing it. We don't need to tolerate these conditions any longer * * * just keep thinking about the s-t-r-e-t-c-h o-u-t and the need for higher wages." Attached to the letter were printed posters of the Union stating that a vote for the Union is a vote for: higher wages, company-paid pensions, better insurance plan, more paid holidays, and better vacations. At the hearing, the Trial Examiner questioned Milliken as to whether Darlington regarded the Union organization of the plant as an economic factor to be considered by the directors, and he answered that "it meant to me and to the other

directors that we could expect increased resistance to the cost cutting" (JA 477).

Following a discussion and a thorough review of *all* the foregoing adverse economic factors confronting their company, a resolution was unanimously adopted by the directors authorizing the calling of a meeting of the stockholders to vote upon a recommendation that Darlington liquidate its business. The directors instructed Oeland to run a public notice of the call of the stockholders' meeting for 17 October in the Darlington newspapers, and "to keep the plant status quo for the final decision of the stockholders." The plant was operated during this period on a full schedule of hours worked and no employees were laid off or discharged. The Solicitor General paints a lurid picture of statements allegedly made by minor supervisors to some employees *after* the board of directors had recommended to the stockholders that the corporation be liquidated. While the Trial Examiner credited these statements, he expressly found that "they are not shown to have reflected any declaration by Milliken" (JA 66). None of the statements were made by officers or directors of Darlington. Some were made due to concern over the impending loss of their own jobs (JA 482), and they were expressions of personal opinion unauthorized by management.

Stockholders' Meeting on 17 October

There were 217 stockholders of Darlington. Approximately 100 of these lived in South Carolina, 50 in New York, and the remainder were scattered over the United States. One hundred and fifty of these stockholders were represented in person or by proxy at the meeting on 17 October in Darlington. Of a total of 150,000 outstanding shares, 9,357 shares were represented in person, and 129,328 shares by proxy.

Roger Milliken opened the stockholders' meeting with a reading of a statement which was phrased largely in terms of the likely economic difficulties with which the com-

pany would be beset if it continued in business (JA 267). This statement pointed out to the stockholders "that they might well take their funds out of Darlington and reinvest them in tax exempt bonds which would give them a higher return on their investment without any risk". Milliken presented the directors' recommendation to liquidate and commented on the factors that led to the recommendation. Following the report and a discussion, a resolution was adopted providing for the liquidation and dissolution of Darlington immediately after the present goods in process were fully processed and authorizing the directors to sell at auction all of the physical assets and properties of the company. The resolution was adopted by the favorable vote of 134,911 shares, and 3,774 shares were voted against the resolution.

Decisions of the Board and the Court Below

Insofar as the Section 8(a)(3) charge is involved, the Board noted in its decision that Darlington advanced two defenses. One, "it claimed that the shutdown of its mill was due to economic and financial factors" (JA 7). The second, that "it had an absolute right 'to go out of business for whatever reason it may choose, and regardless of whether union animosity may have contributed to the decision'" (JA 7). As to the first defense, the Board predicated its decision upon a dubious ruling of law, viz.:

> "Moreover, even assuming, as the Respondent contends, that the 6 genuine economic factors as well as the employees' union activities were responsible for the closing of the mill, Darlington's action was no less unlawful. A plant shutdown resulting in the discharge of employees that is partly due to employees' union activities constitutes an unfair labor practice". (JA 9).

In overruling the second defense, the Board held that "§ 8(a)(3) literally proscribes Darlington's closing of its business in retaliation for the employees' selection of the Union as their bargaining representative", and "in addi-

tion, Darlington's conduct was contrary to the fundamental spirit and purpose of the Statute" (JA 16). It is Darlington's position that the Board was not justified in liberally and loosely interpreting the Act so as to place the substantial onus on Darlington of either staying in business against the best judgment of all its directors and more than ninety-three per cent of its shareholders, or paying back pay until the last cent of their investment in the enterprise was expended. In any event, the entire thrust of the Board's approach to the Section 8(a)(3) charge was directed to the defenses of Darlington as the sole employer. The Board only placed minor reliance upon the single employer argument which is now the basis for the questions presented by the Union and the Board in their respective petitions.

Member Rodgers filed a dissenting opinion, being of the view that Darlington had not "violated the Act by liquidating its plant and going out of business." He was of the opinion that there was nothing contained in the Act "which limits an employer's right to go out of business at such time and under such circumstances as he chooses" (JA 36). Member Rodgers set forth in his opinion some of the legislative history of the Act to indicate that "Congress gave no serious consideration to the limiting of so fundamental a right as the employer's right to go out of business." He quoted from Senator Walsh, Chairman of the Senate Labor Committee, during the debate on the Wagner Act:

> "Mr. President, there are some fundamental rights an employer has, just as there are rights an employee has. *No one can compel an employer to keep his factory open.* • • •
>
> • • •
>
> "*No one can keep an employer from closing down his factory and* putting thousands of men and women on the street. • • • " (JA 36-7)

Board Member Leedom (formerly its Chairman) filed a concurring and dissenting opinion in which he found, in agreement with the Trial Examiner, that Darlington and Deering-Milliken did not occupy a single-employer status and therefore the sole issue was whether Darlington alone engaged in the alleged unfair labor practices. Member Leedom also dissented from the majority with respect to the back pay remedy, being of the opinion that back pay should be awarded only from the date of the discrimination to the date when the plant closed (J.A. 34).

On 15 November 1963 the Court of Appeals for the Fourth Circuit denied enforcement of the Board's order, 325 F. 2d 682. The majority held that the decision by the stockholders of Darlington to close the plant was not an unfair labor practice. In so concluding, the court accepted *arguendo* the contention of the Board that the "substantial economic reasons warranting the determination to close the plant" disclosed by the evidence and discussed in the preceding pages of this brief "were not acted upon," and it assumed with the Board, "again arguendo," that, even if they were acted upon, if unionization played any part in the decision to close the plant, then it might be considered as responsible for the decision (325 F. 2d at 685). The court held that "to go out of business in toto, or to discontinue it in part, permanently at any time, we think was Darlington's absolute prerogative" (p. 685). Having decided that there was no violation of the Act by Darlington, it was unnecessary to pass upon the issue of projected liability through single-employer status: "Our decision that Darlington is without liability, of course, bars such expansion of responsibility" upon Deering Milliken (p. 687).

Argument

To focus attention on precisely what is offered as an issue for Supreme Court determination, it is important to keep in mind that both the Union and the Board urge that the legal conclusion of the majority of the Board was cor-

rect, and that the legal conclusion of the majority of the court below was in error, as to whether Darlington violated Section 8(a)(3) of the Act by closing its only plant and permanently terminating its business. The complaint was originally issued solely against Darlington charging it with a violation of Section 8(a)(3) (J.A. 49), and the Trial Examiner begins the Intermediate Report with the statement that "With the closing of the mill, the salient issue in this case is whether such closing and the discharge of employees was discriminatory in violation of Section 8(a)(3) of the National Labor Relations Act" (J.A. 44). The majority of the Board agreed with such a view of the principal issue involved, saying: "One of the major issues in this case was raised by Darlington's contention that, as an employer, it had an absolute right 'to go out of business for whatever reason it may choose, and regardless of whether union animosity may have contributed to the decision' " (J.A. 7); and "At this point we reach the fundamental issue noted above—whether an employer has the absolute right to go out of business even if its reason for doing so is its employees' union activities" (J.A. 9-10); and, "We find, in conclusion, and for the foregoing reasons that Darlington's closing of the mill, with its concomitant discharge of employees violated Section 8(a)(3) and (1) of the Act" (J.A. 18). Member Rodgers dissented from this conclusion, and posed the determinative issue as follows: "The question to be resolved with respect to Darlington is the important and fundamental question of whether or not Darlington violated the Act by liquidating its plant and going out of business. My colleagues have found that such a going out of business constitutes a violation of law which must be remedied by this Board. I do not agree" (J.A. 36).

The Board petitioned the Court of Appeals to enforce the Order which had found that Darlington as a single entity had violated Section 8(a)(3). In the court below the Board devoted 34 pages of its brief to its argument that Darlington had violated Section 8(a)(3) by permanently closing its plant, and thereafter dealt with its "Questions

Involved" number 4, viz., "Whether the Board properly found that the Deering Milliken corporations and its affiliated corporations occupy a single-employer status with Darlington, and are responsible for the unfair labor practices found."

The majority of the court below agreed with Darlington's view of the law as applied to the facts of this record, thereby accepting the view of the dissenting member of the Board. It said, "our decision that Darlington is without liability, of course, bars such expansion of responsibility [upon Deering-Milliken under the doctrine of single-employer liability]." 325 F. 2d at 687.

The issue in the present case is uniquely narrow, and no amount of "horribles" suggested by petitioner Union (Pet. in pp. 14-17), and no amount of reframing of the basic question involved as suggested by petitioner Board (Pet. p. 2), can convert it into one warranting review by this Court on certiorari. This Court is properly concerned only with the limited issue of whether Darlington, upon the record, had the right to permanently close its only plant and completely go out of business.

The decision does not in any sense broadly carve an exception out of the Act as argued by the Union in its petition (No. 846, p. 16), nor is "the problem so acute" as envisaged by the Board (No. 874, p. 14). Such arguments bear no relationship to the carefully worded and limited opinion of the Court of Appeals. The Court expressly limited its rulings (325 F. 2d at 685):

> "Of course, the right of discontinuance which we here uphold, means an actual, unfeigned and permanent end of operations—not a removal, nor subcontract, nor a change merely in the form of the corporate entity. No ruse or subterfuge is suggested here. Darlington's was an absolute desistence, not a temporary intermission . . ."

In their zeal to obtain review before this Court, petitioners have asked the Court to review a decision never rendered.

The decision of the court below as to Darlington was not predicated upon a disagreement or agreement with the Board over any facts. "Our opinion is that the decision to close the plant was not an unfair labor practice. In this we accept the findings of fact made by the Board". 325 F. 2d at 685. The court went on to record that even though "the evidence discloses substantial economic reasons warranting the determination to close the plant without reference to the entry of the Union into the plant, we accede arguendo to the contention of the Board that these reasons were not acted upon".

Nor was the Board's so-called "expertise" involved in the decision of the court below. The review of the Section 8(a)(3) determination of the Board involved the same degree of judgment by the court as by the administrative body. The court below was as fully equipped to pass upon the fundamental rights of Darlington to terminate its business operations as was the Board.

I.

The Decision of the Court Below Denying Enforcement of the Board Orders on the Ground that Darlington's Permanent and Total Discontinuance of Business Was Not an Unfair Labor Practice Was Clearly Correct and Presents No Questions Cognizable under Rule 19 of the Rules of This Court.

The court of appeals was clearly correct in its decision of the basic question that was presented to it and that it did decide. The court's decision was that it was Darlington's absolute prerogative to discontinue its business—to make "an actual, unfeigned and permanent end of operations" (325 F. 2d at 685).

The Board does not present this question for review by this Court and even opposes review of the question at page

three of its memorandum in response to the Union's petition.

The majority of the court below arrived at its conclusion by the judicial view that the "fundamental purpose of the National Labor Relations Act is to preserve and protect the rights of both industry and labor so long as they are in the relationship of employer and employee", and by a resort to the reasoning of many decisions handed down by the courts of appeals. 325 F. 2d at 685-6. In contrast, the Board seems to read into the Act a supervening obligation upon Darlington to remain in business, once the Union entered the scene, or a kind of suspension of the power of alienation, denying to the employer-owner of the business the right to dispose of his property, and to terminate his status as an employer if a Union is demanding bargaining rights. But the legislative history of the Act as set forth in the opinion of dissenting Member Rodgers completely refutes this reading of the Act (JA 36).[2] The right of Darlington to close its plant was recognized by this Court in *Southport Petroleum Co.* v. *NLRB*, 315 U. S. 100, 106 (1942), with Justice Jackson saying, "Whether there was a *bona fide* discontinuance and a true change of ownership—which would terminate the duty of reinstatement" was a question of fact determinable by the Board or the Court on contempt proceedings.

The Board and the Union in their petitions for a writ of certiorari unwarrantedly attempt to treat the ruling of the court below as enunciating a general rule that under all circumstances an employer may close one department, or one of its several plants, without thereby violating the Act where the purpose was to avoid dealing with the Union.

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[2] It is significant that neither the majority decision of the Board nor the dissenting opinion of the court below refer to any legislative history of the Act to support their conclusion. Nor did the Board or the Union cite any legislative history in their briefs.

When the opinion is considered in its entirety, it is abundantly clear that the court below limited its ruling to the right of Darlington alone to close its only plant and completely go out of business, and this was manifestly correct. "In the review of judicial proceedings the rule is settled that if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason". *Helvering* v. *Goweran*, 302 U. S. 238, 245 (1937).

Pertinent to a consideration of the instant petitions is the statement by Mr. Justice Frankfurter, speaking for a unanimous court, in *NLRB* v. *Pittsburgh S. S. Company*, 340 U. S. 498, 502 (1951):

> "Were we called upon to pass on the Board's conclusions in the first instance or to make an independent review of the review by the Court of Appeals, we might well support the Board's conclusion and reject that of the court below. But Congress has charged the Courts of Appeals and not this Court with the normal and primary responsibility for granting or denying enforcement of Labor Board orders. 'The jurisdiction of the court [of appeals] shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review * * * by the Supreme Court of the United States upon writ of certiorari. * * * ' Taft-Hartley Act § 10(e), 61 Stat 148, eh 120, 29 USC (Supp III) § 160(e). Certiorari is granted only 'in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.' * * * "

II.

There Is No Conflict of Decision.

The Board asserts in its petition (p. 15) that the decision of the court below sustaining the employer's right permanently close its plant and go out of business "conflicts in principle with the decision" of the Eight and Second Circuits.[3] The Solicitor General candidly adds that it is "possible to distinguish these cases as involving the abandonment of a mere phase of a single operation in contrast to the closing of a separately incorporated plant, geographically segregated from the employer's other operations" (p. 16). Hence, there has not been cited any real conflict in decisions.

Rather, the Board expressly recognized in its decision in October 1962 that "there is no decided case dispositive of Darlington's claim that it had an absolute right to close its mill, irrespective of motive" (JA 15). Decisions of courts of appeals that have been handed down subsequent to October 1962 do not raise any conflict in principle with the decision of the court below but rather confirm and strengthen same. See, *NLRB* v. *New England Web, Inc.*, 309 F. 2d 696 (1 Cir., 1962); and *NLRB* v. *Kingsford*, 313 F. 2d 826 (6 Cir., 1963).[4]

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[3] *National Labor Relations Board* v. *Missouri Transit Company*, 250 F. 2d 261 (8 Cir.), and *National Labor Relations Board* v. *Savoy Laundry, Inc.*, No. 28119 (C. A. 2), decided January 24, 1964.

[4] The Board stated subsequent to its decision in the instant case: "we respectfully disagree with two circuit court decisions, *N.L.R.B.* v. *Rapid Bindery, Inc.*, 293 F. 2d 170 (C. A. 2), and *N.L.R.B.* v. *J. M. Lassing, d/b/a Consumers Gasoline Stations*, 284 F. 2d 781 (C. A. 6), cert. denied 366 U. S. 909. Those cases held in effect that a respondent employer does not violate Section 8(a)(3) by accelerating the termination of its business or the moving of its plant because of the advent of a union." *Myers Ceramic Products Co.*, 140 N.L.R.B. 232, 234 (December 1962).

III.

There Is No Important Question of Federal Law.

The Board argues in its petition that this Court is here presented an important question in the administration of the Labor Act, stating that the decision has evoked wide interest and comment (pp. 16-17). Perhaps there would be validity to this argument if the underlying question were the one that the petitioners seek to present to this Court, namely, whether an employer may permanently discontinue a department or a division, or a part only of its business operations in order to avoid dealing with the Union. As shown, however, this is not the question properly presented and decided by the court below. The mere assumption of principles of law, or the mere listing of remote possible analogies, do not make an important federal question. The interjection of different possibilities of application of the labor law to other factual situations does not convert a correct decision into an important question of federal law.

Strangely, there is no citation to any pending litigation, no indication that in the almost year and a half time since the Board's decision was entered in this case have similar problems arisen, and no contention that in the cases pending before the Board is there involved any similar problem. Rather, the decision of the Board has been cited by the majority in only two subsequent Board decisions and in no court opinions; nor has the decision of the court below been cited in any subsequent court or Board decision.[5] This situation is in sharp contrast with the ruling of the Board in *Fibreboard Paper Products Corp.* v. *National Labor Relations Board,* 138 NLRB 550, enf. 322 F. 2d 411, certiorari granted, 375 U. S. 963,[6] which deals with

[5] Shepard's Federal Labor Law Citations, Volume V, No. 4, March 1964 issue.

[6] Decision cited eight times in subsequent Board decisions, and in two decisions by courts of appeals.

the extent of the employer's duty to bargain concerning a projected curtailment of operations or the abandonment of a business for economic reasons through subcontracting of work.

In summary, the decision below accords with a sound application of the Act. There is no conflict of circuits, but rather the decision accords with principles articulated by many circuits. There is no persuasive reason why certiorari should be granted.

CONCLUSION

For the foregoing reasons respondent Darlington Manufacturing Company prays that the writs of certiorari should be denied.

Respectfully submitted,

THORNTON H. BROOKS,
Attorney for Darlington Manufacturing Company,
440 West Market Street,
Greensboro, North Carolina.

27 March 1964

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INDEX

	Page
Interest of the AFL-CIO	1
Argument	2
I. The Decision Below Emasculates the Language and Policy of the Act	4
II. The Decision Below Conflicts with Long-Established Doctrines	6
III. An Employer has no Absolute Right to Close a Plant, Regardless of Motive	11
Conclusion	20

CITATIONS

CASES:

Abe Adolph Bochner, 85 NLRB 633	7
A. M. Andrews Co. of Oregon v. *NLRB*, 236 F. 2d 44	8
Associated Press v. *NLRB*, 301 U.S. 103	11, 15
Atlas Underwear Co. v. *NLRB*, 116 F. 2d 1020	10
Barbers Iron Foundry, 126 NLRB 30	7
Bermuda Knitwear Corp., 120 NLRB 332	8
Bonnie Lass Knitting Mills, Inc., 126 NLRB 1396	11
Gerity Whitaker Co., 33 NLRB 393	8
Griffin v. *Prince Edward County School Board*, 377 U.S. 218	20
Industrial Fabricating, Inc., 119 NLRB 162	8
Jacob H. Klotz, 13 NLRB 746	8
McGregor & Werner, Inc., 136 NLRB 1306	10
M. Yoseph Bag Co., 128 NLRB 211	7
NLRB v. *Abrasive Salvage Co.*, 285 F. 2d 552	9
NLRB v. *Brown-Dunkin Co.*, 287 F. 2d 17	8
NLRB v. *Empire Mfg. Corp.*, 260 F. 2d 528	9
NLRB v. *Hoppes Mfg. Co.*, 170 F. 2d 962	10
NLRB v. *Howard-Cooper Corp.*, 259 F. 2d 558	9
NLRB v. *Hugh Major*, 296 F. 2d 466	8
NLRB v. *Kelly & Picerne, Inc.*, 298 F. 2d 895	8
NLRB v. *Lexington Electric Products Corp.*, 283 F. 2d 54	8
NLRB v. *Missouri Transit Co.*, 250 F. 2d 261	7
NLRB v. *New England Upholstery Co.*, 268 F. 2d 590	9
NLRB v. *Norma Mining Corp.*, 206 F. 2d 38	7, 9
NLRB v. *Preston Feed Corp.*, 309 F. 2d 346	8
NLRB v. *Realist, Inc.*, 328 F. 2d 840	9
NLRB v. *Savoy Laundry, Inc.*, 327 F. 2d 370	7, 18

Page

NLRB v. *Somerset Classics, Inc.*, 193 F. 2d 613 7
NLRB v. *Truck Drivers Local Union No. 449*, 353 U.S. 87 ..... 7, 11
NLRB v. *Wallick*, 198 F. 2d 477 7
NLRB v. *Winchester Electronics*, 295 F. 2d 288 8
New England Webb, Inc., 135 NLRB 1019 7
Phelps Dodge Corp. v. *NLRB*, 313 U.S. 177 15
Rome Products Co., 77 NLRB 1217 8
Scheiber Millnery Co., 26 NLRB 937 8
Sidele Fashions, Inc., 133 NLRB 547 7
S & K Knee Pants Co., 2 NLRB 940 8
Southport Petroleum Co. v. *NLRB*, 315 U.S. 100 17
Star Baby Co., 140 NLRB 678 7
St. Cloud Foundry & Machine Co., 130 NLRB 911 7
Superior Maintenance Co., 133 NLRB 746 7
Town & Country Manufacturing Co. v. *NLRB*, 316 F. 2d 846 8
United States v. *American Tobacco Co.*, 221 U.S. 106 19
Wiley v. *Livingston*, 376 U.S. 543 18
Williams Motor Co. v. *NLRB*, 128 F. 2d 960 7
Worth Mfg. Co., 134 NLRB 444 10

STATUTES:

Labor Management Relations Act, 1947, as amended (61 Stat. 136 *ff.*, 29 U.S.C. §§ 141 *ff.*):
Section 1(b) 5
Section 7 10
Section 8(a) 2, 4, 5, 9

MISCELLANEOUS:

Note, *Business Liquidation as an Unfair Labor Practice*, 48 Cornell L. Q. 572 ..... 3, 6, 11
Note, *Termination of a Business to Avoid Unionization—Rights and Remedies*, 1963 Duke L. J. 786 3
Johannesen, *The Case of the Runaway Mill: Darlington Mfg. Co.*, 12 Lab. L. J. 1189 ..... 3, 13
Schoemer, *Case of the Runaway Author: Professor Johannesen's Article on the Darlington Case*, 13 Lab. L. J. 356 ..... 3, 13
1963 Duke L. J. 786 3
51 Ill. B. J. 588 3
16 Stanford L. Rev. 209 ..... 3, 8, 16
111 U. Pa. L. Rev. 672 ..... 3, 5
49 Va. L. Rev. 616 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 37

TEXTILE WORKERS UNION OF AMERICA,
Petitioner
v.
DARLINGTON MANUFACTURING COMPANY,
ET AL.

NO. 41

NATIONAL LABOR RELATIONS BOARD,
Petitioner
v.
DARLINGTON MANUFACTURING COMPANY,
ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

INTEREST OF THE AFL-CIO

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

This case presents a number of issues of evident major concern to organized labor. In order to avoid duplication, and by arrangement with counsel for the Textile Workers

Union of America (TWUA), this brief will deal only with the questions whether it is a violation of the National Labor Relations Act for an employer to shut down a plant in order to discourage union activity and to avoid having to bargain with a union (1) upon the assumption that the plant closed constitutes a separate business entity and (2) upon the contrary assumption that the plant is one of several constituting a single employer entity.

ARGUMENT

The NLRB unanimously found that the Darlington plant was shut down in order to discourage union activity by its employees and to avoid having to bargain with the Union. (R. I, 6-9.) Four members of the Board held that this closing of the Darlington mill violated § 8(a)(3), (5) and (1) of the Act, even viewing the Darlington mill as a separate entity.[1] The Board further held, by a vote of 3-2, that Darlington was not a separate entity but was one plant of several in a single employer entity consisting of Darlington and various related corporations, collectively referred to as Deering-Milliken.[2] (R. I, 23-27.)

The Court of Appeals, by a vote of 3-2, denied enforcement. The court majority accepted, at least arguendo, the findings of the Board as to the motives for closing the Darlington plant, and that Darlington was one plant of several comprising a single employer entity, but declared (R. VI, 1899):

> "To go out of business in toto, or to discontinue it in part, permanently at any time, we think was Darlington's absolute prerogative."

[1] Only Member Rodgers dissented from this conclusion. He took the position that the permanent cessation of an employer's entire business cannot violate the Act, regardless of motivation. (R. I, 35-38.)

[2] Members Rodgers and Leedom dissented from this holding. (R. I, 34, 35.)

The majority opinion seems also, or alternatively, to take the position that in any event an employer who has gone out of business cannot be reached by a Board order.[3]

The holding of the court below that there was an absolute right to shut down Darlington, "even if Darlington was a division of Milliken" (R. VI, 1901), represents a uniquely extreme view. It does violence to the language and policy of the Act, and as far as we have found, it is contrary to every other pronouncement on the subject whether by judges, Board Members,[4] or legal commentators.[5] Save for the three judges comprising the majority below, everyone who has considered the subject had concluded that it is a clear violation of the Act for an employer to shut down one of several mills, or any part of an operation, because the employees have chosen to be represented by a union.

While few cases have arisen involving the shutting down of an entire business, we submit that the Board majority is correct in holding that no distinction is to be made between a total and a partial shutdown.

---

[3] The dissenting judges so read the opinion. (R. VI, 1902.)

[4] Board Member Rodgers, though he dissented from the Board's decision, did not take the position taken by the court below. Member Rodgers' view was that Darlington was a separate entity, and that an employer has an absolute right to cease business entirely.

[5] See, *e.g.*, Note, *Business Liquidation as an Unfair Labor Practice*, 48 Cornell L. Q. 572 (1963); Note, *Termination of a Business to Avoid Unionization—Rights and Remedies*, 1963 Duke L. J. 786; 49 Va. L. Rev. 616 (1963); 111 U. Pa. L. Rev. 672 (1963); 16 Stanford L. Rev. 209 (1963); 51 Ill. B. J. 588 (1963); Johannesen, *The Case of the Runaway Mill: Darlington Mfg. Co.*, 12 Lab. L. J. 1189 (1961); Schoemer, *Case of the Runaway Author: Professor Johannesen's Article on the Darlington Case*, 13 Lab. L. J. 356 (1962). Mr. Schoemer was one of the attorneys for respondent Deering-Milliken, Inc., in the court below. His article is quoted *infra*, p. 13.

I

THE DECISION BELOW EMASCULATES THE LANGUAGE AND POLICY OF THE ACT

It is clear beyond cavil that under the literal language of the Act it is an unfair labor practice for an employer to discontinue business, whether in whole or in part, in order to avoid dealing with a union or as a retaliation against his employees for voting for a union.

Section 8(a) declares that it shall be an unfair labor practice for an employer "(3) by discrimination in regard to * * * tenure of employment to * * * discourage membership in any labor organization * * *." Surely an employer who shuts down a plant, and terminates the jobs of its employees, engages in discrimination in regard to tenure of employment; and surely when the shutdown is to punish the employees because a majority voted for a union, the discrimination is for the purpose of discouraging membership in a union. As the Board said, it is an "uncomplicated, literal violation of § 8(a)(3)." (R. I, 10.)

Section 8(a) likewise declares that it shall be an unfair labor practice for an employer "(5) to refuse to bargain collectively with the representatives of his employees * * *." Here the employer nakedly refused to bargain, and closed the plant—an uncomplicated, literal violation of § 8(a)(5).

Again, § 8(a) declares that it shall be an unfair labor practice for an employer "(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." Among the rights guaranteed in § 7 are the rights to join a union and to bargain collectively through representatives of their own choosing. Surely it cannot be questioned that an employer interferes with, restrains, and coerces employees in the exercise of these rights when

the employer closes a plant as retaliation for joining a union, and to avoid bargaining.

As stated in a discussion of the present case in 111 U. Pa. L. Rev. 672, 673-674 (1963):

> "To allow a business to operate on condition that its workers remain unorganized and to shut down should they engage in union activities not only destroys the workers' right to self organization after an election, but tolerates the imposition of an implicit deterrent to any organizational activity."

Section 8(a)(3) does not say that an employer shall not discriminate except by closing a plant; § 8(a)(5) does not say that an employer shall not refuse to bargain collectively, unless he chooses to close his plant; § 8(a)(1) does not say that an employer shall not interfere with, restrain or coerce employees in the exercise of their rights under the Act, except by closing his plant. Yet the court below in effect read these exceptions into the Act.

This rewriting of the Act was in derogation of its stated broad policies, as well as of its literal language. Section 1 (b) of the Taft-Hartley Act declares that—

> "Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under the law one another's legitimate rights * * *.
>
> "It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers * * *."

Plainly it will not promote the "full production of articles and commodities for commerce" or the "full flow of commerce" to permit employers to shut down their plants as a way of denying to employees their legitimate rights as

defined in the Act. To write such a dogma into the Act negates its basic policies.

And no distinction can be drawn on the basis of either the literal language or the general policies of the Act between closing one plant among several or the complete cessation of an entire business.

The holding of the court below makes a mockery of the Act, for it sanctions a way of totally destroying the rights guaranteed to employees by the Act, and of punishing the employees into the bargain for having sought to exercise those rights. As one commentator put it, the shutdown is the "ultimate weapon" in "the arsenal of the recalcitrant employer." Note, *Business Liquidation as an Unfair Labor Practice*, 48 Cornell L. Q. 572, 584 (1963).

Not only were the rights of the employees to join and bargain through a union wholly frustrated; but they were punished by being permanently discharged. Non-union employees, the community as a whole, and perhaps minority stockholders,[6] were also damaged by the fallout, since plant shutdown is an unselective weapon.

II

THE DECISION BELOW CONFLICTS WITH LONG-ESTABLISHED DOCTRINES

The holding below is utterly inconsistent with numerous doctrines long established by the Board and approved by the courts; including the court below.

1. Apart from the holding below in the present case, the Board and court decisions uniformly hold that it is an

[6] Some of the residents of Darlington who owned stock in Darlington Manufacturing Company voted against liquidation. (R. II, 494-495.)

unfair labor practice for an employer to shut down either his entire operation,[7] or one of several plants,[8] or to discontinue a part of his business[9] in order to avoid dealing with a union or as a reprisal against his employees for having joined or voted for a union. In *NLRB* v. *Truck Drivers Local Union No. 449*, 353 U. S. 87, 93, this Court referred with evident approval to—

> "the cases in which the lockout has been held unlawful because designed to frustrate organizational efforts, to destroy or undermine bargaining representation, or to evade the duty to bargain."[10]

So also it is a violation of the Act for an employer to subcontract a part of his operations in order to rid himself

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[7] *NLRB* v. *Norma Mining Corp.*, 206 F. 2d 38 (4th Cir.) (temporary shutdown); *Star Baby Co.*, 140 NLRB 678 (permanent closing), *enforcement denied on other grounds* (2nd Cir., July 17, 1964); *M. Yoseph Bag Co.*, 128 NLRB 211, *remanded sub nom. District 65, Retail Union* v. *NLRB*, 294 F. 2d 364 (3d Cir.), *question rendered moot on remand*, 139 NLRB 1310 (permanent closing); *Barbers Iron Foundry*, 126 NLRB 30 (permanent closing).

[8] *NLRB* v. *Wallick*, 198 F. 2d 477 (3d Cir.) (permanent closing); *NLRB* v. *Somerset Classics, Inc.*, 193 F. 2d 613 (2d Cir.), *cert. denied*, 344 U. S. 816 (temporary shutdown); *Sidele Fashions, Inc.*, 133 NLRB 547, *enforced per curiam*, 305 F. 2d 825 (3rd Cir.) (permanent closing); *New England Webb, Inc.*, 135 NLRB 1019, *enforcement denied on other grounds*, 309 F. 2d 696 (1st Cir.) (permanent closing).

[9] *NLRB* v. *Savoy Laundry, Inc.*, 327 F. 2d 370 (2d Cir.) (permanent closing); *NLRB* v. *Missouri Transit Co.*, 250 F. 2d 261 (8th Cir.) (permanent closing); *St. Cloud Foundry & Machinery Co.*, 130 NLRB 911, *enforced by default*, 295 F. 2d 511 (8th Cir.) (permanent closing); *Williams Motor Co.* v. *NLRB*, 128 F. 2d 960 (8th Cir.) (permanent closing); *Superior Maintenance Co.*, 133 NLRB 746 (permanent closing); *Abe Adolph Bochner*, 85 NLRB 633, *enf'd per curiam*, 180 F. 2d 1021 (3d Cir.) (permanent closing).

[10] At this point the Court cited, inter alia, the *Wallick* and *Somerset Classics* cases, cited *supra*, note 2.

of a union,[11] or to discontinue one part of his operation and transfer its work to other parts.[12]

It has likewise been settled since the early days of the Wagner Act that it is an unfair labor practice for an employer to move his business from one location to another to evade bargaining with a union.[13] The principle in these cases is of course precisely the same as in the plant shut down cases. Indeed, when, as in the present case, an employer who operates several plants closes one of them and increases production at the remaining plants, plant shut down and plant removal become undistinguishable.

And, as stated in 16 Stanford L. Rev. 209, 214 (1963):

> "[T]here seems to be no valid distinction between a case of complete liquidation and cases holding that a plant relocation, shutdown of part of a plant operation, or shutdown of one of a number of plants solely or primarily because of union hostility constitutes a violation of the act. In all four situations the traditional rights of management prerogative and 'free enterprise' are subordinated to the overriding policy of fair labor practices."

None of these decisions, whether dealing with the shutting down of an operation in whole or in part, or with plant

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[11] *Town & Country Manufacturing Co.*, v. *NLRB*, 316 F. 2d 846 (5th Cir.); *NLRB* v. *Preston Feed Corp.*, 309 F. 2d 346 (4th Cir.); *NLRB* v. *Hugh Major*, 296 F. 2d 466 (7th Cir.); *NLRB* v. *Kelly & Picerne, Inc.*, 298 F. 2d 895 (1st Cir.); *NLRB* v. *Brown-Dunkin Co.*, 287 F. 2d 17 (10th Cir.).

[12] *NLRB* v. *Winchester Electronics*, 295 F. 2d 288 (2d Cir.); *NLRB* v. *Lexington Electric Products Corp.*, 283 F. 2d 54 (3d Cir.); *cert. denied sub nom. Local 3, International Brotherhood of Electrical Workers, AFL-CIO*, 365 U. S. 845; *A. M. Andrews Company of Oregon* v. *NLRB*, 236 F. 2d 44 (9th Cir.).

[13] *S & K Knee Pants Co.*, 2 NLRB 940; *Jacob H. Klotz*, 13 NLRB 746; *Scheiber Millinery Co.*, 26 NLRB 937; *Gerity Whitaker Co.*, 33 NLRB 393, *enf'd*, 137 F. 2d 198 (6th Cir.); *Rome Products Co.*, 77 NLRB 1217; *Industrial Fabricating, Inc.*, 119 NLRB 162; *Bermuda Knitwear Corp.*, 120 NLRB 332.

removal, or with subcontracting, or with the transfer of work from one establishment to another, turned on whether the employer's action was of permanent or temporary character, though in most instances the former was the case. While the permanent or temporary nature of the employer's action may affect the problem of framing an appropriate remedy, it is irrelevant to the question whether the employer's conduct violates the Act.

However, the majority below declared that the right to shut down permanently is peculiarly sacrosanct, and it distinguished its earlier decision in *NLRB* v. *Norma Mining Corp.*, 206 F. 2d 38 (4th Cir.), on the ground that "Darlington's was an absolute desistence, not a temporary intermission as apparently was contemplated" in *Norma*. Although the Trial Examiner's Report in *Norma* discloses that the shutdown of the mine in that case was temporary, that factor was not so much as adverted to in either the Board's decision or that of the court below. There is no basis either in principle or in the language of the Act for distinguishing between a temporary and a permanent closing. And usually there is no basis of distinction as respects the effect on the employees; for in most cases, including *Norma*, they were laid off permanently, even though the operation was subsequently reopened.

2. It is well established that it is an unfair labor practice for an employer to threaten to go out of business if the employees select a union as their bargaining representative. Such a "threat of reprisal" is not within the protections of § 8(c) or of the First Amendment. *NLRB* v. *Abrasive Salvage Co.*, 285 F. 2d 552 (7th Cir. 1961); *NLRB* v. *Realist, Inc.*, 328 F. 2d 840 (7th Cir. 1964), *cert. denied*, 377 U.S. 994; *NLRB* v. *New England Upholstery Co.*, 268 F. 2d 590 (1st Cir. 1959); *NLRB v. Empire Mfg. Corp.*, 260 F. 2d 528 (4th Cir. 1958); *NLRB* v. *Howard-Cooper Corp.*, 259 F. 2d 558 (9th Cir. 1958);

NLRB v. *Hoppes Mfg. Co.*, 170 F. 2d 1962 (6th Cir. 1948); *Atlas Underwear Co.* v. *NLRB*, 116 F. 2d 1020 (6th Cir. 1941); *McGregor & Werner, Inc.*, 136 NLRB 1306 (1962); *Worth Mfg. Co.*, 134 NLRB 444 (1961). Indeed threats to close the Darlington plant if the union won the election were held by the Board to be an unfair labor practice in this very case. (R. I, pp. 6-7.) The majority below did not deny that these threats constituted an unfair labor practice;[14] while the dissenting judges declared (R. VI, 1914):

> "The repeated threats of members of management that the mill would be shut down if the union won the representation election constituted a classic form of interference, restraint, and coercion proscribed by Section 8(a)(1)."

It would be utterly anomalous to hold that a threat to close is a violation of the Act, but that the actual closing—the effectuation of the threat—is not. If a threat to close interferes with, restrains and coerces employees in the exercise of the rights guaranteed in § 7, the actual closing does so in much greater degree.

It may be noted that threat to close, like an actual closing, is aimed at all employees, union adherents and opponents alike. But that has never been thought to render the conduct permissible. Any principle that an employer may threaten or penalize his employees if a majority vote for a union, so long as he penalizes all employees, union and non-union alike, would be utterly destructive of the rights guaranteed by the Act. Such a doctrine would intimidate all employees everywhere from exercising those rights, and not merely the employees of a particular recalcitrant employer.

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[14] Referring presumably to these and other violations the court held that "Remedies for these offenses are not now available as Darlington is no longer alive." (R. VI, 1902.)

None of the courts which have held that a threat to close is an unfair labor practice have suggested that it makes any difference whether the threat is to close permanently or temporarily, or is to close an entire business or only part of one.

3. The closing, or subcontracting, or transfer of an operation to another location, as a reprisal against employees for union activity, does not differ in substance from the naked discharge of employees for engaging in union activity.[15]

This is well put in Note, *Business Liquidation as an Unfair Labor Practice*, 48 Cornell L. Q. 572, 581 (1963):

> "Darlington's contention, when carried to its logical extreme, would imply that if the company had discharged ninety-nine percent of its employees, this would be an unfair labor practice; but that if it had discharged one hundred percent of them and liquidated its business, this would not be a violation. Clearly, each is an attempt by the employer to avoid the statutory duty to bargain dictated by the NLRA; hence, each should be an unfair labor practice."

In *Bonnie Lass Knitting Mills, Inc.*, 126 NLRB 1396 (1960), the employer discharged 100 employees, retaining only three. Surely the employer would have not been in any better legal posture if he had also discharged the three.

III

AN EMPLOYER HAS NO ABSOLUTE RIGHT TO CLOSE A PLANT, REGARDLESS OF MOTIVE

The court below held that an employer has an "absolute prerogative" to go out of business at any time, regardless

[15] Thus in *NLRB* v. *Truck Drivers Local Union No. 449*, quoted *supra* p. 7, this Court, after referring to cases in which "the lockout has been held unlawful," cited not only cases involving lockout but also *Associated Press* v. *NLRB*, 301 U. S. 103 (1937)—the leading case on discriminatory discharge.

of motive, just so long as he goes out of business "permanently." On this basis the court denied enforcement of the Board's order, both in whole or in part. This ruling has no visible means of support, factual or legal.

1. To begin with, in view of the court's acceptance, arguendo, of the Board's finding that Darlington was one plant of several constituting a single employer entity—i.e., Deering-Milliken, there is no basis for saying that this employer went out of business, either permanently or temporarily. Certainly Deering-Milliken did not go out of business. It merely liquidated one of several plants.

In its original opinion the court below not only asserted that Darlington had gone out of business "permanently," but that the manufacturing done at Darlington was not transferred to other Milliken mills when Darlington was shut down. Thus in its original form the decision below in part read:

> "Of course, the right of discontinuance which we here uphold, means an actual, unfeigned and permanent end of operations—not a removal, nor subcontract, nor a change merely in the form of the corporate entity. No ruse or subterfuge is suggested here. * * * It is noteworthy that Darlington was the only Milliken related plant manufacturing print cloth, and since its liquidation none of the remaining mills has undertaken the manufacture of that kind of product."

However, the final sentence of this paragraph was deleted by the court by order dated December 9, 1963. (R. VI, 1916-1917.)

Presumably the court deleted the sentence because it was not factually accurate. The Darlington plant was closed permanently and its equipment sold at auction on a piecemeal basis. (R. I, 6, II, 258.) At the time of the liquidation, Darlington was making four different types of cloth, two of which were also being made by other Deering-Milliken

mills. Darlington's unfilled contracts for these two types of cloth were taken over by other Deering-Milliken mills. (R. III, 933-934.) Darlington's contracts for the other two types of cloth were cancelled, but within a few months other Deering-Milliken mills began to make cloth of the two types theretofore made only by Darlington. (R. III, 934 *ff.*; 955 *ff.*)

Thus even if the tests advanced by the court below were accepted as legally significant, *i.e.*, that the employer must go out of business "permanently," and that the closing must be a "permanent end of operations—not a removal," those tests are not met in this case. The employer was Deering-Milliken, and it did not go out of business. The Darlington production was simply transferred to other Deering-Milliken mills. In that sense this is a "runaway" plant situation.[16]

If, as the court below thought, it was significant whether there was a permanent closing or a removal, the fact that the Darlington machinery was sold should not weigh against the fact that the Darlington production was assumed by other mills in the same chain. The large textile chains as a normal part of their operations regularly dispose of antiquated mills and replace them with newer mills,

[16] Mr. John R. Schoemer, Jr., one of the attorneys for Deering-Milliken, Inc. in the court below, is the author of an article entitled *Case of the Runaway Author: Professor Johannesen's Article on the Darlington Case*, 13 Lab. L. J. 356 (1962). In this article Mr. Schoemer undertook to answer an earlier article by Professor Johannesen entitled *The Case of the Runaway Mill: Darlington Mfg. Co.*, 12 Lab. L. J. 1189 (1961). Mr. Schoemer stated (p. 358):

> "And to compound the distortion of the record, the author later makes the flat statement that when Darlington liquidated, its existing business was simply transferred to other mills included within this 'textile empire' (p. 1194). If these facts were true, they would provide some justification for the indiscriminate labeling of Darlington as a 'runaway mill,' but in fact the statements are false."

often at different localities.[17] That does not mean that the parent chain is in any real sense going permanently out of business, either in whole or in part. Thus even if the proposition of the court below that an employer has an absolute right to go out of business permanently, regardless of motive, were accepted, this is not that case.

However, no such doctrine is, or should be, known to the law.

2. A more technical rationale given by the court below in support of its decision is that the Act applies to employers and unions only "so long as they are in the relationship of employer and employee." Hence (R. VI, 1899):

> "It [the Act] does not compel a person to become or remain an employee. It does not compel one to become or remain an employer. Either may withdraw from that status with immunity, so long as the obligations of any employment contract have been met."

The total ignorance of the content of a major federal statute which these assertions disclose is rather breathtaking.

The statute's operation is of course in no way limited to the time when persons are in the relationship of employer and employee with each other. It applies before

[17] TWUA's research department endeavors to keep informed on the opening and closing of textile mills, though its data is no doubt incomplete. At the request of counsel for the AFL-CIO, it tabulated its information as to the opening and closing of mills over the past ten years by six major textile chains, *viz.*, Burlington Industries, Inc., Dan River Mills, Inc., Deering, Milliken, Inc., Indian Head Mills, M. Lowenstein & Sons, Inc., and J. P. Stevens & Co., Inc. During that period these six textile chains disposed of 73 plants, 27 being sold as operating plants and 46 being closed; and acquired 201 plants, 189 through purchase or lease of existing plants, 11 by new construction, and one by plant reopening. During this ten year period Deering-Milliken closed three plants, including Darlington, and acquired 11, 10 through purchase and one by new construction.

such a relationship is created, and bans an employer's discriminatory refusal to hire union members. *Phelps Dodge Corp.* v. *NLRB*, 313 U.S. 177. The statute likewise bans discriminatory discharge for union membership or activity. Section 8(a)(3); upheld in *Associated Press* v. *NLRB*, 301 U.S. 103.

Under the rationale and language of the court below an employer would, absent an employment contract, be free to discharge employees for any reason, such as union membership, for the statute would cease to apply with the termination of "the relationship of employer and employee." That of course is nonsense.

3. A second rationale, if that is not too flattering a term, advanced by the majority below is that an employer who goes out of business to avoid dealing with a union or to punish his employees has imposed the ultimate penalty upon himself, so that the Board and courts have no power to impose any other or additional penalty. Thus the court said, "If a cessation of business is adopted to avoid labor relations, the proprietor pays the price for it * * *" (R. VI, 1899). Again, "The predominant element of the principle we maintain is that the business is no longer extant and the owner has forfeited the penalty for withdrawing, that is, he has foregone the privilege of further pursuit of his business." (R. VI, 1901.)

This notion of self-punishment seems to be interrelated with the idea that the closing must be permanent, so as to be costly to the employer.

The statute provides that the Board shall order such relief as will effectuate the policies of the Act. It does not provide that an employer's violation of the Act shall be exculpated if his course of conduct is sufficiently costly to

himself.[18] As stated in a discussion of this case in 16 Stanford L. Rev. 209, 214 (1963):

> "That an employer will rarely go out of business simply to avoid dealing with a union and that when it does so it will bring upon itself its own penalty, since the action will normally result in the loss of profits, are of little solace to the employee who has been discriminatorily deprived of his livelihood.

4. Finally, the court below thought it clear that an employer cannot be compelled to remain in business, and indeed that "A statute authorizing an order forcing the continued pursuit of operations * * * would be of doubtful validity." (R. VI, 1899). Reasoning backward from that premise, the court concluded that an employer therefore could not be held in violation of the Act for going out of business, regardless of motive.

This reasoning confuses two quite different issues, *viz.*, (1) whether a shutdown may, ever, violate the Act, and (2) whether, if so, the Board has power to order resumption of operations. It is not necessary to decide the second question in order to decide the first, for the evident reason that even if the Board could not order resumption of operations, a shutdown might nevertheless be a violation of the Act which the Board could remedy by an order not including resumption of operations.

Indeed the Board did not order resumption of operations in this case. We think the Board was in error; that the

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[18] The record does not establish whether the closing of the Darlington mill was or was not costly from the standpoint of Deering-Milliken. Undoubtedly the closing was costly to the employees and to the community, and perhaps to the minority stockholders in Darlington whose views were overriden. However, the respondents contended that the closing was dictated by normal business considerations and would have taken place regardless of the vote for the union. While this contention was rejected by the Trial Examiner and the Board, it suggests that the closing may not have been financially disadvantageous from the standpoint of Deering-Milliken.

relief it ordered is wholly inadequate to effectuate the policies of the Act; and that this Court should direct the Board to order Deering-Milliken to reopen a Darlington mill and to offer reinstatement there to the laid-off Darlington employees. But however that may be, that is a wholly separate question from whether the shutdown violated the Act. For the court below to determine the question whether there was a violation on the basis of whether a particular remedy for the violation would be valid—a remedy which the Board had refused to grant—is pure Alice-in-Wonderland.

The lower court's confusing of the separate issues of violation and remedy is underlined by its reliance on *Southport Petroleum Co.* v. *NLRB*, 315 U. S. 100, which, the court below asserted "implicitly recognized" the right of an owner to go out of business at his option, so long as the closure is intended to be permanent "even if spurred by unionization." (R. VI, 1900). In *Southport* the Board ordered the company to reinstate with back pay three employees who had been discriminatorily discharged. After the Board had filed its petition for enforcement with the Court of Appeals, the company filed an application with the court to adduce additional evidence before the Board that title to its refinery had been permanently transferred to a new corporation not connected with it. The court denied the application, and this Court affirmed the denial.

There was no contention in *Southport* that the dissolution itself constituted an unfair labor practice, and it likewise was not questioned that the discriminatory discharges violated the Act. The only question was whether the company should have been permitted to adduce evidence of transfer of the refinery because of the bearing that might have on the framing of the remedial order. We of course do not question that the shutdown of the Darlington mill must be taken into account in this case, not only because

the shutdown itself (unlike the transfer in *Southport*) violated the Act, but in connection with the framing of the remedial order.

Furthermore an employer no more has, as the court below put it, an "absolute prerogative" to go out of business, either permanently or temporarily, than employees have an absolute right to strike, either permanently or temporarily. Both rights are subject to regulation in the public interest by the National Labor Relations Act. When an employer engages in a shutdown in violation of the Act, he can properly be ordered to resume operations, just as employees who engage in a forbidden strike can be ordered to resume work.

As this Court stated in *Wiley* v. *Livingston*, 376 U. S. 543, 549, though in a different context:

> "The objectives of national labor policy, reflected in established principles of federal law, require that the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced by some protection to the employees from a sudden change in the employment relationship."

We submit that there is no absolute barrier, constitutional or otherwise, to ordering an employer to reopen a plant, when such an order is appropriate to effectuate the policies of the Act. (We leave to the brief of TWUA the demonstration that such an order is appropriate in this case.)

The Thirteenth Amendment's ban on involuntary servitude, if that be what the court below had in mind, might bar an order requiring an individual member of management or an individual employee to remain at his post, when he wished to quit. The Amendment might also bar an order requiring an individual owner-operator of a business to resume operation, though that is less clear. *Cf. NLRB* v. *Savoy Laundry, Inc.*, 327 F. 2d 370 (2d Cir.). But the

Amendment's reach is limited to banning involuntary labor by individuals; it confers no constitutional right to shut down a business, whether by decision of its owners or managers or the concerted action of its employees.

Indeed, there has never been any "absolute prerogative" to go out of business, or to perpetuate an illegal discontinuance.

It will hardly be suggested that an agreement between competing businesses that one of them will shut down, or the purchase of plants of a competitor in order to shut them down, is immune from the anti-trust laws. These were among the techniques employed in *United States* v. *American Tobacco Co.*, 221 U. S. 106, 174-175:

> "Thus, it is beyond dispute: First, that since the organization of the new American Tobacco Company that company has acquired four large tobacco concerns, that restrictive covenants against engaging in the tobacco business were taken from the sellers, and that the plants were not continued in operation, but were at once abandoned."

The Court, however, did not regard the shutdowns as within some "absolute prerogative" of the owner, but as particularly invidious methods of violating the law. It said (221 U. S. at 182-183):

> "* * * we think the conclusion of wrongful purpose and illegal combination is overwhelmingly established by the following considerations: * * * *e.* By persistent expenditure of millions upon millions of dollars in buying out plants, not for the purpose of utilizing them, but in order to close them up and render them useless for the purposes of trade."

And the Court directed the lower court to devise a plan "of dissolving the combination and of recreating" a condition in harmony with the law.

Even governmental bodies do not have any "absolute pre-

rogative" to discontinue operations, if the object of the discontinuance is an unlawful one. *Griffin* v. *Prince Edward County School Board*, 377 U. S. 218. The Court declared (p. 231): "Whatever nonracial grounds might support a State's allowing a county to abandon public schools, the object must be a constitutional one * * *." And, on the question of relief, the Court held (p. 233) that—

> "the District Court may, if necessary to prevent further racial discrimination, require the Supervisors to exercise the power that is theirs to levy taxes to raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system in Prince Edward County like that operated in other counties in Virginia."

Obviously no constitutional problem of the slightest substance would be involved in ordering Deering-Milliken to reestablish a mill in Darlington, and to offer employment there to those it illegally discharged.

CONCLUSION

For the reasons stated herein and in the brief for TWUA, it is submitted that the decision below should be reversed.

Respectfully submitted,

J. Albert Woll
General Counsel, AFL-CIO
Robert C. Mayer
Theodore J. St. Antoine
736 Bowen Building
815 Fifteenth Street, N.W.
Washington 5, D. C.

Thomas E. Harris
Associate General Counsel, AFL-CIO
815 Sixteenth Street, N.W.
Washington, D. C.

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	3
Statement	3
A. The Board's findings of fact	3
1. The unfair labor practices	3
2. The interrelation between Darlington and the other Deering-Milliken plants	13
B. The Board's conclusions and order	21
C. The decision of the court of appeals	23
Summary of argument	24
Argument	26
Introductory	26
I. It is an unfair labor practice for an employer to liquidate one of several units of his business in retaliation against the employees in that unit for selecting a representative for the purposes of collective bargaining	30
II. The Board has power to grant effective remedies for the unfair closing of one of the several units of an employer's business, including reinstatement to employment or preference in hiring in the remaining operations and reimbursement for lost pay	43
Conclusion	49
Appendix	50

CITATIONS

Cases:	
A.M. Andrews Company of Oregon v. *National Labor Relations Board*, 236 F. 2d 44	34
Atlas Underwear Co. v. *National Labor Relations Board*, 116 F. 2d 1020	36

744-798—64——1

Cases—Continued

	Page
Butler Bros. v. *National Labor Relations Board*, 134 F. 2d 981, certiorari denied, 320 U.S. 789	34
Fibreboard Paper Products Corp. v. *National Labor Relations Board*, No. 14, this Term	28, 44
Franks Bros. Co. v. *National Labor Relations Board*, 321 U.S. 702	44
Hudson Hosiery Co., 72 NLRB 1434	35
Jacob H. Klotz, 13 NLRB 746, modified, 29 NLRB 14	38
Jays Foods, Inc. v. *National Labor Relations Board*, 292 F. 2d 317	36
National Labor Relations Board v. *A. K. Allen Co.*, 252 F. 2d 37	27
National Labor Relations Board v. *Brown-Dunkin Company*, 287 F. 2d 17	34
National Labor Relations Board v. *Caroline Mills, Inc.*, 167 F. 2d 212	36
National Labor Relations Board v. *Chicago Steel Foundry Co.*, 142 F. 2d 306	38
National Labor Relations Board v. *Cowell Portland Cement Co.*, 148 F. 2d 237, certiorari denied, 326 U.S. 735	38
National Labor Relations Board v. *Deena Artware, Inc.*, 361 U.S. 398	27
National Labor Relations Board v. *E. C. Brown Co.*, 184 F. 2d 829	34
National Labor Relations Board v. *Erie Resistor Corp.*, 373 U.S. 221	25, 35
National Labor Relations Board v. *Exchange Parts Co.*, 375 U.S. 405	24, 33, 35
National Labor Relations Board v. *Fruehauf Trailer Co.*, 301 U.S. 49	33
National Labor Relations Board v. *Gerity Whitaker Co.*, 137 F. 2d 198, certiorari denied, 318 U.S. 763, enforcing, 33 NLRB 393	46
National Labor Relations Board v. *Gibraltar Industries, Inc.*, 307 F. 2d 428, certiorari denied, 372 U.S. 911	27
National Labor Relations Board v. *Hill & Hill Truck Line, Inc.*, 266 F. 2d 883	38
National Labor Relations Board v. *Hugh Major*, 296 F. 2d 466	34
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1	33, 35, 47

Cases—Continued

	Page
National Labor Relations Board v. *Katz*, 369 U.S. 736	46
National Labor Relations Board v. *Kelly & Picerne, Inc.*, 298 F. 2d 895	34
National Labor Relations Board v. *Kingsford*, 313 F. 2d 826	31
National Labor Relations Board v. *Lexington Electric Products Co.*, 283 F. 2d 54, certiorari denied *sub nom. Local 3, International Brotherhood of Electrical Workers, AFL–CIO* v. *National Labor Relations Board*, 365 U.S. 845	34, 46
National Labor Relations Board v. *Mackneish*, 272 F. 2d 184, enforcing *per curiam*, *Industrial Fabricating, Inc.*, 119 NLRB 162	38, 46
National Labor Relations Board v. *Mall Tool Co.*, 119 F. 2d 700	36
National Labor Relations Board v. *Missouri Transit. Co.*, 250 F. 2d 261	25, 37, 38, 46
National Labor Relations Board v. *Morris Fishman & Sons, Inc.*, 278 F. 2d 792	31
National Labor Relations Board v. *National Motor Bearing Co.*, 105 F. 2d 652	36
National Labor Relations Board v. *New Madrid Mfg. Co.*, 215 F. 2d 908	37
National Labor Relations Board v. *New England, Web, Inc.*, 309 F. 2d 696	36
National Labor Relations Board v. *Preston Feed Corp.*, 309 F. 2d 346	34, 44
National Labor Relations Board v. *R. C. Mahon Co.*, 269 F. 2d 44	36
National Labor Relations Board v. *Royal Oak Tool & Machine Co.*, 320 F. 2d 77	27
National Labor Relations Board v. *Savoy Laundry, Inc.*, 327 F. 2d 370	25, 38
National Labor Relations Board v. *Schieber*, 116 F. 2d 281, enforcing, 26 NLRB 937	46
National Labor Relations Board v. *Seven-Up Bottling Co.*, 344 U.S. 344	47, 48
National Labor Relations Board v. *Somerset Classics, Inc.*, 193 F. 2d 613, certiorari denied *sub nom. Modern Mfg. Co.* v. *National Labor Relations Board*, 344 U.S. 816	36
National Labor Relations Board v. *Somerset Shoe Co.*, 111 F. 2d 681	36

Cases—Continued

	Page
National Labor Relations Board v. *Stowe Spinning Co.*, 336 U.S. 226	27
National Labor Relations Board v. *Stremel*, 141 F. 2d 317	34
National Labor Relations Board v. *Tak Trak, Inc.*, 293 F. 2d 270, certiorari denied 368 U.S. 938	34
National Labor Relations Board v. *Tredway*, 222 F. 2d 719, enforcing *per curiam*, *Diaper Jean Manufacturing Co.*, 109 NLRB 1045	38
National Labor Relations Board v. *Tupelo Garment Co.*, 122 F. 2d 603	36
National Labor Relations Board v. *United States Air Conditioning Corporation*, 302 F. 2d 280	34
National Labor Relations Board v. *Wallick*, 198 F. 2d 477	34, 46
National Labor Relations Board v. *Waterman Steamship Corp.*, 309 U.S. 206	38
National Labor Relations Board v. *West Coast Casket Co.*, 205 F. 2d 902	31
National Labor Relations Board v. *Winchester Electronics*, 295 F. 2d 288	34
National Labor Relations Board v. *Winona Knitting Mills*, 163 F. 2d 156	38
Phelps Dodge Corp. v. *National Labor Relations Board*, 313 U.S. 177	44, 47
Philadelphia Dress Joint Board, International Ladies' Garment Workers' Union, AFL-CIO v. *National Labor Relations Board*, 305 F. 2d 825, enforcing *per curiam*, *Sidele Fashions, Inc.*, 133 NLRB 547	46
Sakrete of Northern California v. *National Labor Relations Board*, 332 F. 2d 902	27
Southport Petroleum Co. v. *National Labor Relations Board*, 315 U.S. 100	36
Town & Country Manufacturing Company v. *National Labor Relations Board*, 316 F. 2d 846	34
Williams Motor Co. v. *National Labor Relations Board*, 128 F. 2d 960	45

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*):

	Page
Section 7	24, 30, 32, 50
Section 8(a)(1)	21, 23, 24, 30, 31, 32, 33, 34, 42, 43, 44, 47
Section 8(a)(3)	21, 24, 30, 33, 34, 42, 43, 44, 47, 50
Section 8(a)(5)	21, 23, 50
Section 9(a)	51
Section 10(b)	51
Section 10(c)	43, 47

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 37

TEXTILE WORKERS UNION OF AMERICA, PETITIONER

v.

DARLINGTON MANUFACTURING COMPANY, ET AL.

No. 41

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DARLINGTON MANUFACTURING COMPANY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (VI R. 1894–1914) [1] is reported at 325 F. 2d 682. The findings of

[1] The printed record is in six volumes, the first four of which are paginated consecutively. "R" refers to the first four volumes, "V R" to the fifth volume, and "VI R" to the sixth volume. "Tr." and "G.C.Ex." references are to the certified copy of the original transcript and the General Counsel's exhibits, respectively, which have been filed with the Court. References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

fact, conclusions of law and order of the Board (R. 1–246) are reported at 139 NLRB 241.

JURISDICTION

The decrees of the court of appeals were entered on November 19, 1963 (VI R. 1915, 1926–1927, 1933–1934). On February 13, 1964, the Chief Justice extended the Board's time for filing a petition for a writ of certiorari to and including February 28, 1964 (VI R. 1934). The petition for a writ of certiorari in No. 37 was filed on February 17, 1964; the Board's petition for a writ of certiorari in No. 41 was filed on February 28, 1964. On April 20, 1964, the Court granted both petitions for certiorari, and consolidated the cases (VI R. 1956). 377 U.S. 903. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, 29 U.S.C. 160(e).

QUESTION PRESENTED

Whether an employer which operates a number of separate plants under common control commits an unfair labor practice, in violation of Sections 8(a)(1) and (3) of the National Labor Relations Act, by discontinuing the operation of one plant, dismissing its employees, and liquidating its assets, in order to avoid collective bargaining and in reprisal against

the employees for designating a union to represent them.[2]

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in the Appendix, pp. 50–51, *infra*.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

1. THE UNFAIR LABOR PRACTICES

In March 1956, the Textile Workers Union of America ("the Union") began an organizing campaign among the employees in the Darlington mill

[2] The phrasing of the question assumes that the Deering Milliken complex is to be treated as a single employer with several plants for purposes of the Act. That was the finding of the Board, which the dissenting judges in the court of appeals thought amply supported by the record and which the majority of the court of appeals accepted *arguendo*. Accordingly, in our view, there is no occasion for the Court to reach the further question, presented by the petition in No. 37, whether it is an unfair labor practice for an employer owning only one plant to go completely out of business in order to avoid dealing with the union (see pp. 29, 39–43, *infra*).

The petition in No. 37 raises two further questions respecting the propriety of the Board's order: it is argued (1) that the order should have required a reopening of the Darlington plant; and (2) that Roger Milliken, the chief officer of the various corporations, should have been held personally responsible for the unfair labor practices. For the reasons set forth at pp. 44–46, 48–49, n. 44, *infra*, neither of these issues is substantial.

744-798—64——2

in Darlington, South Carolina (R. 4; Tr. 14), which was owned by a South Carolina corporation. That corporation was found by the Board to be one of 17 corporations, operating 27 textile mills on the Eastern seaboard, all commonly controlled by the Milliken family and constituting a single employer (pp. 13–21, *infra*). At the start of the organizing campaign, Mill Treasurer Oeland promptly advised Roger Milliken of this activity by telephone (Tr. 99). Thereafter, management engaged in a systematic and extensive effort to procure the Union's rejection. On several occasions, threats were made by second hands and overseers that the mill would be closed if the employees voted for Union representation, just as the Milliken family had previously closed a plant in Maine (R. 4, 6–7, 25; 305, 308–309, 317, 319–320, 325, 326–327, 330–331, 334–335, 336–337, 338–339, 343–344, 345–346, 350, 354–355, 356–357, 361–363, 366, 370, 384). Management accompanied these threats with extensive interrogation of employees about what they thought about the Union, whether they favored the Union, whether they had signed union cards, whether they attended union meetings, how many employees attended union meetings, what percentage of the employees were expected to vote for the Union,[3] and whether the Union would win the forthcoming election (R. 4, 6, 77; 303, 305, 313, 316, 317, 334, 339, 345, 350, 354–356, 365, 376–377, 488–489, 490, Tr. 417, 1038).

[3] On May 23, 1956, the Union filed a petition with the Board for a representation election (R. 51–52).

On September 6, 1956, the Union won a Board-directed election by a narrow margin (R. 4; 250–251). Oeland and the corporation's attorney, James D. Poag, immediately telephoned Roger Milliken to advise him of the Union's selection (R. 279). On the following day, Roger Milliken decided that he would recommend to the stockholders and directors that the mill be shut down (R. 4; 1092). He testified (R. 4; 457, see also R. 422–423, 464, 472, 476–477):

> I felt that as a result of the campaign that has been conducted and the promises and statements made in those letters that had been distributed [by the Union] that if before we had had some hope, possible hope of achieving competitive [costs] by taking advantage of new machinery that was being put in, that this hope had diminished as a result of the election because a majority of the employees had voted in favor of the union * * *.

On September 8, the Union asked for a bargaining conference, but was told to wait until after it was certified by the Board (J.A. 253). Meanwhile, Roger Milliken called a special meeting of the board of directors (R. 5; 279–280), which consisted of members of the Milliken family, Oeland, and two others, one of whom was a retired treasurer of the mill (R. 520–521, 1290, 1318, 1322, G.C. Exh. R. 10–R. 18, Tr. 125–126, 1351, 3640).[4] The directors' meeting was held in the

[4] Prior to the meeting, Roger Milliken had advised the members of his family who were on the board of his intention to close the plant. He did not tell Oeland or the other local directors (R. 57, 280–281, 424–426).

office of another Deering Milliken mill, Drayton Manufacturing Company (R. 280). The meeting lasted for an hour and fifteen minutes, during which the directors unanimously adopted a resolution to liquidate the mill and to call a special meeting of stockholders to approve the proposal (R. 5; 431, 1257–1261, Tr. 125–126).[5]

After the directors' meeting, Oeland gave the various supervisors "the words of Mr. Milliken and others regarding the reason for liquidation," and told them to advise their subordinates of the board of directors' recommendation (R. 491–492, Tr. 130). Accordingly, on the evening of the directors' meeting, a Darlington supervisor said to one employee (R. 5, n. 10, 6; 351–352, 490):

> Wonder how the Union people feel now? * * * Mr. Oeland called [second hand] Shirley this afternoon from Spartanburg and said they were going to close the plant down because of the Union * * * Well, I hope you all are satisfied. * * * I told you damn Union people if you all voted the Union in he would close the plant down. * * * Roger Milliken is not going to run a plant with the Union. * * * In spite of what you or the Union think about it, Roger Milliken will close the plant down * * * we would be sorry of it when people were hun-

[5] On the same day, Darlington filed objections to the conduct of the election (R. 5, n. 9; 251). On October 8, the Regional Director issued a report on objections recommending that they be overruled and that the Union be certified. No exceptions were filed to this recommendation, and the Board issued a certification to the Union on October 24, 1956. (*Ibid.*)

> gry. * * * Do you realize that none of you people will ever [get] another job in another cotton mill? You will have to have a personal recommendation from Darlington Manufacturing Company and you will not be able to get that * * *.[4]

Other supervisors gave similar explanations for the decision to shut down the mill (R. 5, n. 10; 306, 309–311, 320, 327, 344, 352–353, 357, 359, 366–367, 370, 374, 482, Tr. 328). One employee who was concerned about getting a recommendation for another job was told by the production manager that "if [she] did not go to one of the Milliken mills [she] had a good recommendation but he would have to tell them that [she] voted for a union" (R. 5 n. 10; 314). A petition in which the employees disavowed the Union was also circulated around the plant in the presence of supervisory personnel. Members of management encouraged a number of employees to sign this petition in order to keep the mill open (R. 5, n. 10, 6; 323–324, 337, 359–360, 368–369, 381–383).

On October 17, the stockholders met to consider a resolution recommending dissolution of the corporation because of "certain developments" relating to plant operations (R. 5; 1262–1265, Tr. 187). At the meeting, Roger Milliken identified the "certain developments" as "the recent election where the majority

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[4] Later, the same supervisor told that employee (R. 353): "* * * Roger Milliken knew that the Union had planned to organize the South and * * * he also knew that they were going to pick one of his mills and he has set a trap for them and they had walked in and took the very mill that Roger Milliken wanted them to take."

of the people in the plant [were] for the union" (R. 5; 292). He opened the meeting with the statement "that on September 6, when [the employees] voted for a union * * * he decided to close the mill" (R. 5; 263). A vote was taken, and the motion to liquidate was carried overwhelmingly (R. 438, 494–495).[1]

After the stockholders' meeting, Roger Milliken met privately with the mayor of the City of Darlington and a state senator, both of whom had voted their proxies against liquidation (R. 265, 494–495). He told them that Darlington would probably "get another industry" (R. 5; 266). When asked why he was closing the mill regardless of the fact that "83% of the people have signed a petition to go back to work whether they have a union or not," Milliken replied, "As long as there was 17% of these hard core labor people here, I refuse to run the mill" (R. 5; 268).

Milliken then issued a news release announcing the decision to liquidate and the sale of the plant at auction "at the earliest possible opportunity" (R. 454, 458, 1270–1271, Tr. 928).

After the board of directors' meeting, Darlington refused to accept any new orders for textiles (R. 6; 282–283). The mill filled some of its old orders and cancelled others (R. 933–934, 955–956, Tr. 2856–2862).

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[1] The only votes against liquidation were those cast by residents of the City of Darlington (R. 494–495). Roger Milliken voted in favor of liquidation all the shares he held in person or by proxy, which included the 41 percent of the shares held by Deering Milliken and Company, the 6 percent held by Roger Milliken and his immediate family, and the 18 percent held by Cotwool Manufacturing Co. (R. 1292–1300, 438, 494–495, Tr. 253).

The remainder were filled by other Milliken mills (see p. 21, *infra*). As the work ran out, the Darlington employees worked shorter and shorter hours and were eventually terminated (R. 6, 11, n. 22; 284–291).

Meanwhile, on October 24, 1956, the Union was formally certified as the employees' statutory representative (R. 5, n. 10; 251). On the following day, the Union sent a telegram to Oeland, advising him of its certification and urging a bargaining conference no later than October 30, "in order to cooperate in maintaining operations of the mill and preserving [the employees'] jobs" (R. 1244, 253, Tr. 24). Oeland advised the Union that the Board had not yet notified him of the Union's "official certification," and that the Union's telegram was being forwarded to Attorney Poag (J.A. 1246, Tr. 24). Arrangements were ultimately made for a meeting in Darlington on November 7 (R. 1248, Tr. 24, 38–39, 48).

At the November 7 meeting, the Union, assuring Attorney Poag that it "wanted to cooperate in every way possible to get the plant back in operation," asked for information regarding wage scales, vacations, holidays, and any incentive plan (R. 71; 254). It also renewed an earlier request for a list of all the employees who had been terminated, their job classification, and the date of their termination (R. 71; 255–256, 1249, Tr. 24). Poag replied that he had not prepared the latter information, and that there was no point in furnishing the wage data "since the decision had already been made to liquidate the plant and that decision was irrevocable" (R. 71; 254, 256).

He agreed to submit information concerning vacations, holidays, the incentive plan, and other fringe benefits (R. 71; 255–256).

By letter dated November 26, 1956, the Union asked Oeland to supply information concerning employees who had been employed and terminated since the election (R. 1250–1251, 257, Tr. 24). Poag replied, "Before we give you information we will have to be assured that it is for a legitimate use rather than for propaganda purposes" (R. 1252–1253, 257, Tr. 24).

In the meantime, late in September 1956, the Deering Milliken Industrial Engineering Department asked Oeland to submit the names of Darlington supervisory personnel who might be "useful" to that department (R. 690–691). Thereafter, a representative of the department interviewed each of the Darlington supervisory personnel, and Oeland supplied a list of supervisory personnel who were to be transferred to the payroll of Industrial Engineering for a three-month period after their separation from Darlington (R. 690–693, 910–912, 1173–1175, 1783, 1792, G.C. Exh. F7, Tr. 3158, 3173, 3173). One purpose of this arrangement was to allow a period of time within which they could be "picked up" by other Deering Milliken mills (R. 1789, 691, 1093-1094).[8] Efforts were also made to preserve the

[8] The Deering Milliken mills recruited supervisory trainees on the assurance that "cross transfers" would be made from mill to mill (pp. 16–17, *infra*). Thus, before the election one overseer remarked that he would not have to worry if the mill closed down because of an election victory by the Union, for "before he took that job they promised him if the mill closed they would place him in another Milliken plant" (R. 334).

transferred supervisors' rights under the Deering Milliken Mills Retirement Plan (G.C. Exh. F7, F8, F9, Tr. 1913, 1918, 1919). A number of the supervisors on Oeland's list were eventually transferred to other parts of the Deering Milliken organization (R. 495–496, Tr. 1087, 1089).[9] Retired treasurer Nicholson, who was receiving a lifetime pension from Darlington, received a guarantee of an equivalent pension from another Deering Milliken mill where he had previously worked; this was arranged by Roger Milliken largely because of Nicholson's "long personal relationship" with the Milliken family (R. 165; 388, 1100–1102).[10]

On October 17, 1956, the Darlington board of directors authorized a partial liquidating dividend to the stockholders amounting to one and a half million dollars—about 40 percent of the mill's assets (G.C. Exh. 15F, Tr. 187, 901–904, 1129). Deering Milliken and Company received about $615,000 in dividends, Cotwool received about $275,000, and Roger Milliken and his immediate family received about $90,000 (R. 293, 437–438).

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[9] These supervisors were transferred directly from Darlington to the other Deering Milliken mills without any interval on the payroll of the Deering Milliken Industrial Engineering Department (Tr. 1916).

[10] A portion of the premiums which the salaried employees (including nonsupervisory personnel) at the Darlington plant had paid for a group insurance policy, which was in effect for all the Milliken mills, was retained by the insurance company as part of the "experience fund" of the other mills (R. 448–449, 673).

On November 14, 1956, Roger Milliken forwarded to the treasurers of a number of Deering Milliken mills, and to certain employees and officials of the Deering Milliken Service Corporation, a news item describing the permanent shutdown of a Massachusetts bedspread factory because, "since signing a labor contract last February, the union had kept the mill in a state of turmoil and reduced efficiency and production to the point that the owners were convinced the Mill had no future and investment of further funds [was] not justified" (R. 1677, 969, V R. 176–177). Also enclosed was a magazine article which, according to Milliken, showed that "this magazine made a real investigation in Darlington" (R. 25; 969, V R. 176–182). Milliken stated, "The unions are going to be making a tremendous drive all through this area, and there are few things that are more important to us than making sure that the leaders in your community understand and are sympathetic to what you are trying to do" (R. 25; 969, V R. 177). Milliken urged a careful reading of the second part of the article, which stated, *inter alia* (R. 25; 969, V R. 176–177, 182):

> If the people of Darlington knew anything of the Deering Milliken record, they would know that that management * * * has [not] intended to share the prerogatives of management with labor union leaders. This has been the case through three generations of Milliken operations. When the Madison Woolen Mills of Madison, Maine, became not only unprofitable but unionized Mr. Gerrish Milliken liquidated

> it * * *. When the Dallas Manufacturing Company of Huntsville, Alabama, became unionized, the Millikens liquidated it, contrary to the opinion of many local people that such would not be the case. We ourselves are small shareholders in Darlington and from experience and acquaintanceship, we knew the minute the union election vote was announced that we would receive a call for a special meeting to vote for liquidation. * * *

The operations of the Darlington plant ceased completely on November 24, 1956, and, on December 12 and 13, 1956, the plant equipment was sold piecemeal at auction (R. 6; 258).

2. THE INTERRELATION BETWEEN DARLINGTON AND THE OTHER DEERING MILLIKEN PLANTS

The Darlington mill, as mentioned above, was owned and operated by a South Carolina corporation as one of 17 corporations, operating 27 textile mills on the Eastern seaboard, all commonly controlled by the Milliken family.[11] The Milliken family owned a majority of the stock in Deering Milliken and Company and in Cotwool Manufacturing Company (one of the 17 corporations),[12] and, through direct stock owner-

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[11] In addition to Darlington, three other mills in the Milliken complex also manufactured cotton print cloths (R. 24; 514–520, 522, 933, 935–936, 938–939, 941, 943–955).

[12] In 1960, after the commission of the unfair labor practices found by the Board, Deering Milliken and Company and Cotwool merged and formed Deering Milliken, Inc. In the process, several of Cotwool's former subsidiaries were absorbed into Deering Milliken, Inc. (R. 1322, 1872–1873).

ship and the stock held by these two companies, the family owned more than 66 percent of Darlington's stock (R. 23–24, 213; 236–237, 1292–1300, 1308–1311.[13] Deering Milliken and Company acted as exclusive sales agent and factor for all 27 textile mills (R. 110–111).[14] Roger Milliken was president of Deering Milliken and Company, and of most of the mill corporations, including Darlington (R. 24; 1322). A majority of the directors of all but one of these corporations were members of the Milliken family (R. 24; 520–521, 1322, 1351).

The head of the Tax Department of Deering Milliken and Company was an officer of each of the 17 mill corporations. His department prepared all federal and state tax returns of the manufacturing corporations and suggested tax-saving techniques on such matters as accounting procedures, vacation plans, and incentive compensation contracts for supervisors. The Tax Department also advised the various manufacturing corporations about the proper drafting of minutes of directors' and stockholders' meetings (R.

[13] Darlington's 150,000 shares of common stock were owned as follows (R. 1310):

	Percent
Deering Milliken & Co., Inc.	41.4
Cotwool Manufacturing Corporation	18.3
Roger Milliken and members of his immediate family	6.4
Directors and employees of Deering, Milliken & Co., Inc.	2.9
"Outside" stockholders	31.0

[14] Each mill corporation was charged a fee for services rendered, which was substantially less than what independent selling and factoring agents would have charged. Deering Milliken and Company had no other non-Milliken affiliated mills as clients (R. 1239c–1239d, Tr. 1384).

25–26, 160–161; 525, 569, 630–639, 642–643, 645–651, 1139, 1322, 1379–1401, 1404–1408, G.C. Ex. D1, D2, D3, D8; Tr. 1735–1741, 1743–1745, 1749–1758, 1766–1777, 1797–1800, 3326).

The Insurance Department of Deering Milliken and Company handled all insurance for the various plants. The corporations purchased standard forms of insurance on which individual policies were issued through the Insurance Department. Fire insurance and workmen's compensation insurance were covered under a single policy for all the plants. Deering Milliken and Company also paid premiums on an executive air insurance policy covering Deering Milliken executives, key personnel of the various manufacturing corporations, and executives of the service and research corporations described below (R. 26; 656–664, 674–678, 680–681, 1426–1427).

The Deering Milliken Service Corporation ("DMSC"), a wholly-owned subsidiary of the 17 manufacturing corporations, was organized in 1951 for the stated purpose of providing "essential services to organizations in the textile industry at the lowest possible cost" (G.C. Ex. F1, Tr. 1885). These services were restricted, almost exclusively, to the manufacturing corporations in the Deering Milliken complex. Various departments of DMSC purchased all machinery, equipment, and cotton for the manufacturing plants. Research was conducted in product improvement, and studies were regularly made in connection with production problems common to most of the plants. Based on its findings, DMSC made recommendations to the various manufacturing corpora-

tions designed to obtain maximum efficiency from raw materials, equipment, and personnel (R. 26, 143, 148, 158–159; 284, 697, 699, 702–707, 709–714, 730–740, 753, 756, 757, 771–777, 780–781, 784, 792–796, 798–799, 809–815, 857–858, 1044–1046, 1062–1064, 1162–1164, 1338, 1445–1446, 1452–1467, 1473–1476, 1479–1482, 1484–1500, 1506, 1508, 1516–1520, 1522–1526, 1532–1558, 1606, 1725–1727).[15]

The Placement Department of DMSC conducted an annual recruitment program among college students, seeking to attract supervisory and technical trainees for each of the manufacturing corporations. The prospective management and technical trainees were encouraged to look upon all the corporations as a single unit. After hiring, there was considerable movement of supervisory personnel among the corporations. Approximately one-half the supervisors who worked at Darlington between 1951 and 1956 were hired from other Deering Milliken corporations, including Darlington's Treasurer and chief operating executive, James M. Oeland (R. 26, 131, 140–142, 145–146, 156; 544–545, 683, 692–693, 699, 701, 721, 830, 868–872, 875, 878–887, 890, 892–910, 917, 920–923, 925, 1073, 1096–1100, 1109–1113, 1144, 1150, 1158, 1161, 1164–1165, 1190–1191, 1201–1203, 1326–1341, 1431–1436, 1493, 1441–1444, 1609–1614, 1617–1620, 1622–1623, 1625–1645, 1651–1666, 1669, 1674–1676,

[15] See also G.C. Exh. G3, G7, G18, H1, H4, I1, J17, L19, L21, O16, Tr. 1361, 1984, 1987, 1991, 1994–1995, 2005–2008, J18, 2062–2063, 2106, 2116, 2117, 2120, 2122, 2127, 2130, 2131, 2134, 2135, 2139, 2142, 2162, 2192, 2199-2200, 2202, 2210–2211, 2214, 2217–2220, 2401, 2402, 2403, 3053, 3409–3410.

1735, 1761, 1835, 1838, 1860).[16] All salaried personnel (other than those working for Deering Milliken and Company) were covered by the same retirement plan, and their coverage was unaffected by transfers among the corporations (R. 131; 1096–1100, G.C. Ex. O17, Tr. 3371).

The Deering Milliken Research Corporation ("DMRC") was a wholly-owned subsidiary of the 17 manufacturing corporations and of Deering Milliken and Company. It supplemented the services provided by DMSC by conducting surveys and inspections in the plants for the purpose of developing a uniform preventive maintenance program, setting goals for production processes, and standardizing machinery and parts (R. 119; 406–409, 454–457, 633–637, 771–773, 776–777, 834–837, 839–841, 843–856, 858–859, 1452–1454, 1571–1574, 1580–1596, 1598–1605, 1607–1608).[17]

The products of the entire Deering Milliken organization are advertised under the single brand name "Milliken" (R. 126; 1231–1232). Repeated references are also made in the corporations' papers to "our organization," "Deering-Milliken Mills," "Deering Milliken Group," and "The Company" (R. 27; 1323–

[16] See also G.C. Ex. B13, F8, F9, F11, F15, F19, L23, M13, M29, O17, Tr. 1361, 1900, 1903, 1905, 1918, 1919, 1924, 1926–1927, 1948, 2459, 2555, 2592–2596, 2598, 2607, 2616, 2621, 2626, 2650, 2651, 2669, 2673, 2681, 2685, 2693, 2702, 2750, 3068, 3342, 3350, 3359.

[17] See also G.C. Ex. B13, D1, D2, L11, I1, Tr. 745–748, 1361, 2491, 2498, 2517, 2523, 2525, 2532, 2537.

1324, 1479–1482, 1636, 1645, 1651–1655, 1674, 1675, 1726–1727). In 1952 Deering Milliken and Company issued a brochure entitled "Fabric Magic by Milliken," which contained phrases such as the "Milliken Mills," the "Milliken Operations," "Mills with Milliken," and statements such as "you made the mills grow like this—1865 one mill; now 29 mills" (R. 27; 1326–1341).

Roger Milliken exercised actual control over the operations of all the corporations.[18] He approved all capital expenditures, taking into account the prospective return to the enterprise as a whole (R. 559–561, 741–744, 839, 990–994, 1053–1054, 1066–1067, 1083–1085, 1355, 1447–1448, 1501, 1687, G.C. Ex. C11, G17, L2, N12, N48, N66, Tr. 1363–1364, 2155, 2477–2478). He took an active interest in minimizing taxes for all the corporations (R. 524–525, 529, 1054–1057, 1313–1314, 1685, 1742–1743, Tr. 2965–2968). He issued numerous memoranda, usually addressed to all the corporations rather than to any one of them, in which he proposed methods to attain uniformity of production and testing (R. 1700–1701, 1715, 1717–1720, 1732–1733, 1005, 1024, 1031, 1032, Tr. 3064), programs for improving production (R. 1702, 1703, 1008, Tr. 3004), and the adoption of technical and related changes (R. 989–990, 1038, 1040, 1046, 1061–

[18] In those corporations where he did not serve as president, Roger Milliken was vice-president (R. 1322).

1062, 1686, 1704, 1722, 1723, 1728, 1729, 1754, 1756, G.C. Ex. N41, Tr. 3007, 3060, 3067, 3096, 3101)."[19]

Roger Milliken also exercised ultimate control over the labor relations of all the corporations. He received reports every four weeks from each mill showing, *inter alia*, the number of hours operated each week; man-hour savings achieved; planned or effected abolition of jobs or changes in job assignments; installation of new piece rates; employee performance and morale; loom efficiencies; instructions to employees regarding work techniques; special compensation to employees whose machines had broken down; safety programs; number of hirings, promotions, and resignations; and changes in such working conditions as lighting, ventilation and humidity (R. 24; 1694–1699, 1797–1811, 1824–1859, 1003–1004, 1033–1034, 1069–1070, 1106–1107, 1153–1161, Tr. 3353). He obtained additional details concerning these matters by correspondence and by visiting the various establishments in the organization (R. 24, 145; 401–409, 454–456, 711, 873–876, 905–906, 1004–1005, 1050–1052, 1063,

[19] Roger Milliken's memoranda were replete with references to "our mills" or "our organization." See, *e.g.*, R. 1679–1680, Tr. 2984 ("our group"); R. 1768–1769, 1079–1081 ("our organization"); R. 1672–1673, Tr. 2701–2702 ("all our mills"); R. 1735, 1047–1048 ("our manufacturing operations"); R. 1718, 1031 ("Deering Milliken group"); R. 1730–1731 ("our machinery," "our mills"); R. 1748–1753, 1061 ("our mills"); R. 1757, Tr. 3104 ("our vacation plans"); R. 1741, 1052–1053, 1142–1143 ("our mills," "our policy"); R. 1687, 990–994; C.G. Ex. N12 ("we," "whole organization"); R. 1709–1710, 1012 ("each of the mills in the organization"); R. 1732–1733, Tr. 3064 ("the whole organization"); R. 1072, Tr. 3002 ("we," "all the mills in Deering Milliken").

1463–1464, 1615–1616, 1648–1650, 1671–1673, 1740, 1759, 1760, 1768–1769, G.C. Ex. M32, Tr. 960–962, 2696).

Roger Milliken took active steps to obtain, retain, and promote qualified technical and managerial personnel in the Deering Milliken organization (R. 873–876, 1639, 1652, 1681, 1761–1769, 1789, 1079–1081, 1093–1094, 883, 890, 1615–1616, Tr. 2954, 2958–2960). He directed the mills to limit the number of spare hands—*i.e.*, employees whose sole assignment is to act as substitutes for absent workers (R. 1086–1089, 1773–1774). His approval was sought before vacation plans were announced, before changes in the employees' group insurance programs were formulated, and before spare hands were hired (R. 1409, 1772, Tr. 1837, 3132, 3133). He also sparked a number of production drives among all the Deering Milliken mills (R. 1463–1464, 1702–1703, 1709–1710, 1715, 1717–1720, 401–409, 454–456, 711, 1008, 1012, 1022, 1031, 1032, Tr. 960–962, 3004). He made detailed proposals and recommendations to his subordinates about such matters as the employment of quality control and engineering personnel; reduction of accidents; tagging machinery with its cost to discourage misuse; use of closed-circuit television to eliminate certain jobs; machinery rearrangement to reduce the operator's walking distances; arrangements for limiting time which employees spent smoking; and installation of beverage dispensing machines for employee use (R. 24; 1026, 1047–1048, 1073–1074, 1716–1718, 1730–1731, 1735, 1748, 1761, Tr. 3063).

Finally, Roger Milliken determined the corporations' policy toward unionization by closing the Dar-

lington plant because of the Union's success in the election (pp. 5–9, *supra*). After the Darlington Mill was closed, several of Darlington's unfilled contracts were assumed by other Milliken mills; in some cases those mills increased their sales to Darlington's former customers, independently of the old contracts (R. 928, 933–967).

B. THE BOARD'S CONCLUSIONS AND ORDER

The Board found that Darlington violated Section 8(a)(1) of the Act by the threats, interrogation, and support of the anti-union petition; that the plant was shut down in order to discourage the employees' union activity and in order to avoid bargaining with the Union; and that Darlington violated Section 8(a)(5) by refusing to bargain with respect to the tenure of employment of the employees in the Darlington mill, and by refusing to furnish the Union with wage and related bargaining data (R. 6–9, 19). The Board (with Member Rodgers dissenting) further found that the shutdown, since it was motivated by anti-union considerations, constituted a violation by Darlington of Sections 8(a)(3), (1) and (5) (R. 918). Finally, the Board (with Members Leedom and Rodgers dissenting) found that there was a sufficient degree of common ownership and common control over labor relations and operations to render Darlington, Deering Milliken, and Deering Milliken's affiliated corporations a single employer under the Act. Hence the Board held that all the violations committed by Darlington

were also attributable to Deering Milliken (R. 18, 23, 27).[20]

The Board's order, *inter alia*, requires Deering Milliken[21] and Darlington to cease and desist from the unfair labor practices found; and, if operations are resumed in Darlington, South Carolina, to bargain with the Union as the employees' exclusive representative (R. 30–31). Deering Milliken and Darlington are further required to make whole all the employees who were on the payroll on October 13, 1956 (the date on which the stockholders voted to liquidate the plant), for any loss of pay they may have suffered as a result of the discrimination against them. If the Darlington plant does not reopen, the backpay period is to terminate when the employees are able to obtain substantially equivalent employment, or when they are placed on a preferential hiring list at other Deering Milliken mills (R. 21–23, 27–28). Deering Milliken is also required to offer employment or placement on a preferential hiring list to the Darlington employees at other Deering Milliken mills in South Carolina or adjacent States; to pay the travel and moving expenses of the employees who accept the offer; and to bargain collectively with the Union for the purpose of reaching an agreement as to the mode of operation of the preferential hiring

[20] The Board dismissed the complaint insofar as it sought to hold Roger Milliken responsible in his individual capacity for the unfair labor practices (R. 29–30).

[21] Since Deering Milliken and Company subsequently merged with Cotwool to form Deering Milliken, Inc. (n. 12, p. 13, *supra*), the Board's order runs against both Deering Milliken and Company and Deering Milliken, Inc. (R. 27, n. 48).

lists and as to the terms and conditions under which the former employees of the Darlington mill may, if they desire, obtain such employment (R. 27–29, 32–33). In addition, Darlington and Deering Milliken are required to mail and publish appropriate notices directed to the Darlington employees (R. 32–33, 42).[22]

C. THE DECISION OF THE COURT OF APPEALS

The court of appeals, sitting *en banc*, denied enforcement of the Board's order by a 3–2 vote. The court accepted *arguendo*, for purposes of its decision, the Board's finding that the Darlington plant was shut down in order to discourage union membership and to avoid bargaining, and also its finding that Deering Milliken and Darlington, together with related corporations, constituted a single employer (VI R. 1898–1896, 1901–1902). The court concluded, however, that the decision to close the plant was not an unfair labor practice, reasoning that an employer has the "absolute prerogative" to "go out of business in toto, or to discontinue it in part, permanently at any time," even if this action is "spurred by unionization" (VI R. 1899). The court also refused to enforce those parts of the Board's order based on its findings that Deering Milliken and Darlington violated Section 8(a) (1) and (5) of the Act prior to the shutdown, on the ground that "remedies for these offenses are not now available as Darlington is no longer alive" (VI R. 1902). The two dissenting judges (Judge

[22] In its order, the Board reserved the right to modify the back pay and reinstatement provisions if necessitated by circumstances not then apparent (R. 33).

Bell and Chief Judge Sobeloff) would have enforced the Board's order (VI R. 1902–1914).

SUMMARY OF ARGUMENT

I

On the findings made by the Board, and accepted *arguendo* by the court of appeals, the question here is simply whether an employer, whose business embraces a number of plants, commits an unfair labor practice if he liquidates one plant in order to frustrate union organization and collective bargaining in that plant. Such action conveys to the remaining employees in the other plants the threat that, if any of them dares to organize for collective bargaining, the plant in which they work may also be liquidated and they too will lose their employment. This is a plain and harsh form of restraint and coercion condemned by Section 8(a)(1) of the Act—far more devastating to organizational activity than the mere "suggestion of a fist inside the velvet glove" condemned in *National Labor Relations Board* v. *Exchange Parts Co.*, 375 U.S. 405, 409. The shutdown of the Darlington mill also violated Section 8(a)(3) of the Act. For such action penalized the employees of that mill merely because they had engaged in activity protected by Section 7, and discriminated between them and the employees at the other mills who had not chosen a bargaining representative. Moreover, the discrimination would inevitably discourage the employees in other Deering Milliken mills from becoming union members and from engaging in union activities.

These conclusions are not inconsistent with the privilege of a business concern to liquidate part of its operations for normal business reasons. Here, as so often in the law, the question is one of motive. See *National Labor Relations Board* v. *Erie Resistor Corp.*, 373 U.S. 221, 227. Many similar business decisions have been found to be unlawful when, as here, they were motivated by anti-union considerations. See *National Labor Relations Board* v. *Missouri Transit Co.*, 250 F. 2d 261 (C.A. 8); *National Labor Relations Board* v. *Savoy Laundry, Inc.*, 327 F. 2d 370 (C.A. 2).

II

Where, as here, an employer closes one of several units of his business for anti-union reasons, the Board has ample power to frame a fair and effective remedy for the unfair labor practices. The Board directed Deering Milliken to rehire the Darlington employees at its other mills, or, where enough jobs were not available, to put them on a preferential list for hiring at those mills. This remedy—which is analogous to the remedies granted in similar situations—constituted a reasonable accommodation of the conflicting interests involved for it tended to restore the *status quo* and to cancel some of the advantage the employer sought to derive from the unfair labor practices, while, at the same time, it avoided the hardship which would have resulted from a requirement that the Darlington mill be reopened long after its liquidation.

The provision of the order requiring Deering Milliken to bargain with the Union about implementa-

tion of the preferential hiring and relocation system was also manifestly appropriate, since the Union had proven its majority status in the Board election and any loss of such status was attributable to the employer's unfair labor practices. And the requirement that the Darlington employees be reimbursed for any wages lost due to the unlawful closing of the Darlington plant is specifically authorized by Section 10(c) of the Act, and consistent with the usual practice in discriminatory discharge cases. Moreover, a full back pay requirement balances whatever deficiency exists as a result of the Board's determination that only limited reinstatement could be ordered. While the total sum involved may be large, this merely reflects the scale on which injury was inflicted on the employees.

ARGUMENT

Introductory.—The issue raised in this case is focused by two findings of the National Labor Relations Board. The Board found: (1) that the Deering Milliken complex was, in effect, a single employer which operated the Darlington mill as one of 27 textile mills (R. 18, 23, 27); and (2) that the Darlington mill was closed for the purpose of avoiding collective bargaining at that mill and "in retaliation for the employees' selection of the Union as their bargaining representative" (R. 16; see, also, R. 8–9). The court of appeals accepted those findings *arguendo*. The strength of

their foundation in the record is indicated by our Statement, *supra*, pp. 3–21."

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[11] The dissenting judges considered whether the finding respecting the Deering-Milliken complex was supported by substantial evidence and concluded that "there was an abundance of evidence to support the Board's position that Darlington, Deering Milliken and its affiliates constituted a single employer for purposes of the Act" (VI R. 1903). This finding is supported by the interlocking stock ownership and control among the corporations; the high degree of integration of operations, culminating in the common trade name—"Milliken"—under which all the Deering Milliken products are sold; the pooling of essential services performed for all the corporations in the Deering Milliken organization; the dominion and control exercised by Roger Milliken over all phases of the business and labor relations of each of the corporations; and the common policy of all the corporations toward unionization of their employees. See *National Labor Relations Board* v. *Stowe Spinning Co.*, 336 U.S. 226, 227, n. 2; *National Labor Relations Board* v. *Deena Artware, Inc.*, 361 U.S. 398, 403–404; *National Labor Relations Board* v. *Royal Oak Tool & Machine Co.*, 320 F. 2d 77, 80–81 (C.A. 6); *National Labor Relations Board* v. *A. K. Allen Co.*, 252 F. 2d 37, 38–40 (C.A. 2); *National Labor Relations Board* v. *Gibraltar Industries, Inc.*, 307 F. 2d 428, 431 (C.A. 4), certiorari denied, 372 U.S. 911. The fact that labor conditions were not uniform in all the plants or that local plant managers exercised substantial control over their own operations does not warrant a contrary finding. The locations of the various plants were widely scattered, and no collective bargaining agreement covered any of the employees. Hence it is understandable that a single management would provide conditions of employment suited to the labor markets in which each of its plants was located. And, because of the geographic distribution of plants, it was necessary to entrust the day-to-day operation of each to local managers who were to make decisions pursuant to the guiding policies laid down by the central management. See *Sakrete of Northern Cali-*

The finding that the "decision to shut the plant 'would not have been made but for the protected organizational activities' of the employees" (R. 8) eliminates any question concerning the right of an employer to go out of business, close a plant, or curtail operations because he finds them unprofitable or because of any other *bona fide* business reason. We fully recognize the businessman's privilege to make and put into effect business decisions, including a decision to close a plant, for normal economic motives.[24] The Darlington mill was closed (the Board found) not for normal economic motives, but out of hostility toward the union which had just been selected as the exclusive representative by a majority of the mill's employees.

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fornia v. *National Labor Relations Board*, 332 F. 2d 902, 904–908 (C.A. 9).

Similarly, the dissenting judges concluded that there was "abundant evidence" to support the Board's finding that the Darlington plant had been shut down for anti-union considerations (VI R. 1909). Thus, Roger Milliken himself told the stockholders that he had decided to close down because the employees had selected the Union, and this view was reiterated by supervisory personnel; Milliken himself circulated to all of his mills a magazine article pointing out that his anti-union attitude was so well known that liquidation was inevitable from the minute the election result was announced; and the economic factors belatedly stressed by Darlington were negated by the prior history of the mill (see R. 7–9, 53–66).

[24] Since the closing here was found not motivated by economic considerations, there is no need to consider how far there is a duty to bargain concerning a projected curtailment of operations or the abandonment of a business for economic reasons. See *Fibreboard Paper Products Corp.* v. *National Labor Relations Board*, No. 14, this Term. In any event, the duty to negotiate with the union is not a duty to agree.

The finding (made by the Board and accepted *arguendo* by the court below) that the Deering Milliken complex was a single employer pretermits any question concerning the application of the Act to an employer who goes out of business permanently and completely because of hostility toward collective bargaining. Under the Board's finding this employer remained in business at other mills, with other employees. Its closing one mill as retaliation against the employees who selected a union representative for the purposes of collective bargaining was a dramatic warning to the employees at the other mills of the disastrous consequences of unionization.

Thus, the question here is simply whether an employer, whose business embraces a number of separate units, commits an unfair labor practice if he liquidates one unit in order to frustrate union organization and collective bargaining in that unit, with the consequent threat to employees in the remaining units that they will suffer similar reprisals if they should attempt to bargain collectively. In Point I we show that such a a closing, motivated by hostility towards unionization and collective bargaining, violates Sections 8(a) (1) and (3). That was the only question decided by the court below, but, since the extent of the Board's power to grant an effective remedy might be thought to be related to the substantive issue of whether the closing of one unit is an unfair labor practice, we show in Point II that the Board has the power to order the employer either to hire the employees who lost their jobs as a result of the closing or else to place them upon a preferential list for hiring at the other plants,

to bargain with the union about these matters, and to pay the employees back pay from the date of the discharge.

I. IT IS AN UNFAIR LABOR PRACTICE FOR AN EMPLOYER TO LIQUIDATE ONE OF SEVERAL UNITS OF HIS BUSINESS IN RETALIATION AGAINST THE EMPLOYEES IN THAT UNIT FOR SELECTING A REPRESENTATIVE FOR THE PURPOSE OF COLLECTIVE BARGAINING

For an employer to close one of several plants and dismiss its employees because they have voted to bargain collectively through a labor union violates Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act. Section 8(a)(1) makes it an unfair labor practice for an employer—

> to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in section 7

Among the Section 7 rights are the rights "to form, join, or assist labor organizations" and "to bargain collectively through representatives of their own choosing."

It is difficult to think of any plainer—or harsher—form of coercion and restraint than closing down and dismissing all the employees in a unit because it has ventured to select a labor organization as its bargaining representative. The denial of the opportunity to bargain is not, in such a case, a mere collateral consequence of a business decision. It is a deliberate refusal to obey the statutory obligation. It is reprisal against the employees who chose to exercise a statutory right. It conveys to the remaining employees in the other plants the threat that, if any of them dares to organize for collective bargaining, the

plant in which they work may also be liquidated and they too will lose their employment. Roger Milliken, the directing force in the Deering Milliken complex, was not unaware of the threat or unwilling to take advantage of it. Six weeks after closing Darlington he circulated among the mill executives a magazine article based, he said, upon "a real investigation in Darlington," which pointed out that Darlington was the third mill to be closed by the Millikens immediately upon unionization (see *supra*, pp. 12–13). Word of this well-advertised policy was bound to spread—and indeed Roger Milliken urged that it be disseminated—through the communities where Milliken mills were located.

Nothing is plainer than that the threat to close an entire plant if the employees vote to unionize—throwing its entire payroll out of employment—is, in fact, a potent means of interfering with and restraining union organization. The evidence in this very case demonstrates the high degree of coercion, for after the decision to close the Darlington plant was announced 83 percent of the employees signed a petition manifesting their readiness to abandon the Union if the plant would remain open and their work were restored (R. 5; 268). And the many decisions which have held that Section 8(a) (1) is violated by an employer's threat, made during a representation election, to close down the plant if the employees vote for a union[25]

[25] *E.g.*, *National Labor Relations Board* v. *Kingsford*, 313 F. 2d 826, 832 (C.A. 6); *National Labor Relations Board* v. *Morris Fishman & Sons, Inc.*, 278 F. 2d 792, 796 (C.A. 3); *National Labor Relations Board* v. *West Coast Casket Co.*, 205 F. 2d 902, 904–905 (C.A. 9).

support the view that any public expression of intent to retaliate against employees' unionization, by terminating the operation in which the employees are engaged constitutes illegal coercion and restraint.

The present case involves conduct far more destructive of the rights protected by Section 7 than the mere threat to close a plant because of employee organization. When, as here, the plant is actually shut down for the purpose of demonstrating to employees the catastrophic effects of a decision to bargain collectively, the interference with, and discouragement of, union membership and activity are far more effective than anything resulting from a threat alone. For the employer thereby expresses the threat, and simultaneously demonstrates that the threat is not idle words. His remaining employees see graphic proof of what lies in store for them if they too dare to vote to unionize.

The shutdown in the present case carried into execution the threats which plant supervisors had made to respondents' employees before the election (p. 4, *supra*).[26] And, shortly, after the decision to shut down was made public, Roger Milliken circulated to other Deering Milliken mill officials the reprint mentioned above (pp. 12–13, 31, *supra*).[9] But even without the explicit threats to cease operations, both before and after the shutdown, the threat implicit in respondents' conduct, in light of the purpose for which they acted, constituted interference and restraint barred

[26] The Board found that the threats themselves constituted independent violations of Section 8(a)(1) (p. 21, *supra*).

by Section 8(a)(1). For if, as this Court recently held in *National Labor Relations Board* v. *Exchange Parts Co.*, 375 U.S. 405, an employer's conferral of benefits which is timed so as to influence his employees' choice of a representative is unlawful because it carries "the suggestion of a fist inside the velvet glove" which the employees are "not likely to miss" (375 U.S. at 409), then *a fortiori* the Act is violated when the fist is bared by direct reprisals.

Respondents' conduct also violated Section 8(a)(3), which makes it an unfair labor practice for an employer—

> by discrimination in regard to hire or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization * * *.

To liquidate the Darlington mill and discharge all its employees because a majority had voted to select a labor organization as their representative for collective bargaining, penalized those employees because they had engaged in activity protected by Section 7, and discriminated between them and the employees at the other mills who had not chosen a bargaining representative. The discrimination would inevitably discourage the employees in other Deering Milliken mills from becoming union members or engaging in union activities. The discrimination, albeit on a larger scale, is the same as occurs when individual employees are discharged because of union activity.[21] It

[21] See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U.S. 49.

is the same in principle, although it may differ slightly in its impact upon the employer, as the discrimination which occurs when a plant is temporarily closed so as to discharge all its employees and replace them with non-union labor;[28] or an operation is shut down preparatory to transferring its functions to a non-union division of the same company[29] or to subcontracting the work to an independent employer.[30]

The conclusion that liquidating one of a chain of mills in reprisal against its employees' selection of a representative for collective bargaining violates Sections 8(a) (1) and (3) is in nowise inconsistent with

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[28] *National Labor Relations Board* v. *Tak Trak, Inc.*, 293 F. 2d 270 (C.A. 9), certiorari denied, 368 U.S. 938; *National Labor Relations Board* v. *Stremel*, 141 F. 2d 317 (C.A. 10); *National Labor Relations Board* v. *E. C. Brown Co.*, 184 F. 2d 829 (C.A. 2); *Butler Bros.* v. *National Labor Relations Board*, 134 F. 2d 981, 985 (C.A. 7), certiorari denied, 320 U.S. 789; *National Labor Relations Board* v. *United States Air Conditioning Corporation*, 302 F. 2d 280 (C.A. 1).

[29] *National Labor Relations Board* v. *Lexington Electric Products Co.*, 283 F. 2d 54 (C.A. 3), certiorari denied *sub nom. Local 3, International Brotherhood of Electrical Workers, AFL–CIO* v. *National Labor Relations Board*, 365 U.S. 845; *A. M. Andrews Company of Oregon* v. *National Labor Relation Board*, 236 F. 2d 44 (C.A. 9); *National Labor Relations Board* v. *Winchester Electronics*, 295 F. 2d 288 (C.A. 2); *National Labor Relations Board* v. *Wallick*, 198 F. 2d 477, 482–483 (C.A. 3).

[30] *National Labor Relations Board* v. *Brown-Dunkin Company*, 287 F. 2d 17 (C.A. 10); *National Labor Relations Board* v. *Keily & Picerne, Inc.*, 298 F. 2d 895 (C.A. 1); *National Labor Relations Board* v. *Hugh Major*, 296 F. 2d 466 (C.A. 7); *National Labor Relations Board* v. *Preston Feed Corp.*, 309 F. 2d 346 (C.A. 4); *Town & Country Manufacturing Company* v. *National Labor Relations Board*, 316 F. 2d 846 (C.A. 5).

the privilege of a business concern to liquidate part of its operations either for normal business reasons or out of sheer caprice. Here, as so often in the law, the question is one of motive. As the Court recently observed in *National Labor Relations Board* v. *Erie Resistor Corp.*, 373 U.S. 221, 227–228, "When specific evidence of a subjective intent to discriminate or to encourage or discourage union membership is shown, and found, many otherwise innocent or ambiguous actions which are normally incident to the conduct of a business may, without more, be converted into unfair labor practices. * * * Conduct which on its face appears to serve legitimate business ends in these cases is wholly impeached by the showing of an intent to encroach upon protected rights."

The discharge of a prominent union organizer will be lawful if undertaken because of his misconduct or the lack of available work, but unlawful if the motive is to deter union organization.[31] A wage increase will be lawful even if it forestalls unionization if granted for normal business reasons, but it will be unfair if awarded for the purposes of defeating unionization.[32] A plant may be closed temporarily for lack of orders, but the employees may not be locked out in reprisal

[31] *E.g.*, *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1.

[32] *E.g.*, *National Labor Relations Board* v. *Exchange Parts Co.*, 375 U.S. 405; *Hudson Hosiery Co.*, 72 NLRB 1434.

for their union activity."[33] The cases cited by the court of appeals (VI p. 1900–1901) to support its conclusion that a company has an "absolute prerogative" to shut down a single plant chiefly involved discontinuances based upon legitimate business considerations. All but one have no bearing upon the situation where the employer's motive is to exact reprisals for unionization, and the one merely contains dictum which was later qualified.[34]

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[33] *E.g.*, *National Labor Relations Board* v. *Somerset Shoe Co.*, 111 F. 2d 681 (C.A. 1); *National Labor Relations Board* v. *Somerset Classics, Inc.*, 193 F. 2d 613 (C.A. 2), certiorari denied, *sub nom. Modern Mfg. Co.* v. *National Labor Relations Board*, 344 U.S. 816; *National Labor Relations Board* v. *Mall Tool Co.*, 119 F. 2d 700 (C.A. 7); *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. 2d 652 (C.A. 9).

[34] In *Southport Petroleum Co.* v. *National Labor Relations* Board, 315 U.S. 100, 106 and *National Labor Relations Board* v. *Tupelo Garment Co.*, 122 F. 2d 603 (C.A. 5), the question was whether the concern named in a Board order had *in fact* been discontinued; there was no question whether a discontinuance motivated by hostility to unionization was an unfair labor practice. *National Labor Relations Board* v. *Caroline Mills, Inc.*, 167 F. 2d 212, 214 (C.A. 5) contains only a dictum that, if the employer *bona fide* discontinued the business, an order of reinstatement would cease to bind it.

In *National Labor Relations Board* v. *R. C. Mahon Co.*, 269 F. 2d 44, the Sixth Circuit held that the Board's finding that the plant protection department was discontinued because of hostility to union activities was not supported by substantial evidence and accepted the trial examiner's finding that the change was made for financial reasons. That was also the only ground for reversal in *National Labor Relations Board* v. *New England Web, Inc.*, 309 F. 2d 696 (C.A. 1), and *Jays Foods, Inc.* v. *National Labor Relations Board*, 292 F. 2d 317 (C.A. 7).

Atlas Underwear Co. v. *National Labor Relations Board*, 116 F. 2d 1020, 1023 (C.A. 6) is apparently cited for the statement that, "While a bona fide shut down of a plant does not of itself

Nor can it be successfully argued that the decision to close a mill is too important a part of the management of a business to allow its legality to turn upon the Board's finding concerning the employer's motivation. While the decision is undoubtedly important to the employer, the magnitude of the coercion against the employees is equally great. No one can entertain serious doubt about the disastrous impact upon union organization and collective bargaining of allowing an employer to close one of a chain of textile mills in order to teach his employees the dangers of union organization. To argue that such deliberately coercive activities must be permitted because they are "important" is, in effect, to assert that the Act reaches the trivial forms of reprisal but not the overwhelming.

The principles discussed above have long been applied to other reprisals involving serious business consequences. It has been held an unfair labor practice to move a plant in order to avoid collective bargain-

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constitute a violation of the Act, undoubtedly a threat or prediction that it might have to close, if unionized, must necessarily affect the judgement of its employees and interfere with their freedom of choice." This obviously has no relevance to a shut down for anti-union reasons (see R. 13).

National Labor Relations Board v. *New Madrid Mfg. Co.*, 215 F. 2d 908, 914 (C.A. 8), does contain a dictum to the effect that an employer has an absolute right totally to abandon his business "for whatever reason he may choose, whether union animosity or anything else." However, the legal conclusions reached by the court in that case were contrary to this dictum (see R. 14–15), and the Eighth Circuit subsequently indicated the limited scope of *New Madrid*. *National Labor Relations Board* v. *Missouri Transit Co.*, 250 F. 2d 261, 264–265 (C.A. 8), discussed *infra*, p. 38.

ing,[35] to shut down a plant or department and lay off the employees for a short period in order to deter unionization,[36] to allot work or temporarily discontinue a shift for like motives,[37] to transfer work from a plant where employees are engaged in union activities to one which is non-union,[38] or to subcontract work to another concern in order to discourage unionization.[39] In two cases the principle has been applied to the discontinuance of major phases of the employer's business. *National Labor Relations Board* v. *Missouri Transit Co.*, 250 F. 2d 261 (C.A. 8), held that a bus company operating short-line intrastate shuttle buses and long-line interstate buses violated Sections 8(a) (1) and (3) when it unconditionally discontinued the shuttle buses and sold the equipment to a competitor because of the union activities of the drivers employed in the intrastate operation. *National Labor Relations Board* v. *Savoy Laundry, Inc.*, 327 F. 2d 370, 371 (C.A. 2), held that a laundry violated

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[35] *National Labor Relations Board* v. *Mackneish*, 272 F. 2d 184 (C.A. 6), enforcing *per curiam*, *Industrial Fabricating, Inc.*, 119 NLRB 162, 163–172; *National Labor Relations Board* v. *Tredway*, 222 F. 2d 719 (C.A. 5), enforcing *per curiam*, *Diaper Jean Manufacturing Co.*, 109 NLRB 1045, 1049, 1054, 1058–1061; *Jacob H. Klotz*, 13 NLRB 746, modified, 29 NLRB 14.

[36] See cases cited in n. 33, p. 36, *supra*. See also, *National Labor Relations Board* v. *Hill & Hill Truck Line Inc.*, 266 F. 2d 883, 886 (C.A. 5); *National Labor Relations Board* v. *Cowell Portland Cement Co.*, 148 F. 2d 237 (C.A. 9), certiorari denied, 326 U.S. 735.

[37] *National Labor Relations Board* v. *Chicago Steel Foundry Co.*, 142 F. 2d 306, 308 (C.A. 7); *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U.S. 206; *National Labor Relations Board* v. *Winona Knitting Mills*, 163 F. 2d 156, 160–161 (C.A. 8).

[38] See cases cited in n. 29, p. 34, *supra*.

[39] See cases cited in n. 30, p. 34, *supra*.

Section 8(a) (1) and (3) by discontinuing a division engaged in the wholesale laundry of shirts "in an effort to frustrate union organization." It is irrelevant (pp. 40–41, *infra*) that those cases did not involve separate plants geographically segregated from the other phases of the employer's operations. Like the present case, both precedents involved major business decisions motivated by anti-union considerations.

Neither the instant case nor any of the analogies cited involves compelling an employer to remain in business, or to operate any part of his business, against his will. By hypothesis the employer who closes only one phase of his operations voluntarily remains in business and his freedom with respect to even that part of the business is limited only by the prohibition against liquidating it as a method of avoiding collective bargaining or coercing employees in respect to their rights to organize and bargain collectively. If the employer wishes to act for any other reason, either before or after the Board's order, his freedom is unimpaired.

There is no substance to the court of appeals' suggestion that an employer who permanently discontinues part of his business "pays the price of it * * * " (VI R. 1899). Here there is ample room for argument about whether the employer actually paid a price for his decision. Since three other mills in the Deering Milliken complex manufactured print cloths similar to those produced by the Darlington mill (R. 24; 514–520, 522, 933, 935–936, 938–939, 941, 943–955), they may well have been in a position to

take over the Darlington portion of the business; indeed, several of Darlington's unfilled contracts were assumed by other Milliken mills and they went on to increase their sales to Darlington's former customers. To the extent that the reprisals at Darlington deterred the employees at other Deering Milliken mills from bargaining collectively, the employer may well have continued to enjoy lower labor costs and higher workloads than a union would have established. The complete answer to the court of appeals' suggestion, however, is that nothing in the statute or the principles developed during 30 years of its administration affords the slightest basis for the suggestion that an employer may engage in anti-union discrimination, coercion and restraint if he is willing to pay a price for it. The possible loss to a company from liquidating part of its operations may bear upon the question of motive, but once the motive has been established the cost is irrelevant.

We recognize that this case differs from the precedents upon which we rely to the extent that the Darlington mill was, in some respects, separate from other units in the Deering Milliken complex. The Darlington mill was owned by a South Carolina corporation; it was physically separate from the other plants; apparently, it received (through Deering Milliken) and filled its own orders for print goods. But these and other characteristics of separateness are inadequate to render the foregoing principles inapplicable in the face of a finding that there was a sufficient degree of common ownership *and common control of labor relations* and operations to constitute Deering

Milliken and its affiliated corporations, including Darlington, a single employer, responsible for the unfair labor practices (R. 23, 27). The critical point is that the same employer that executed the coercive closing of the Darlington mill continued in business.

In the event of the complete cessation of an employer's entire business, for whatever reason, it might conceivably be argued that at the moment of cessation there ceased to be any "employer" subject to the provisions of the National Labor Relations Act who could commit an unfair labor practice in violation of Section 8 or be subjected to a remedial order under Section 10. No doubt it would be answered that the liquidated concern remained responsible for the unfair labor practices committeed while it was in business. That issue need not be resolved here because the Board's finding that Darlington and the affiliated corporations in the Deering Milliken complex constituted a single employer eliminates any basis for the contention that the employer ceased to exist upon the liquidation of the Darlington mill. The Deering Milliken complex continued in business. It was named a respondent and an order was directed against it. Similarly, in the event of a total and permanent cessation of an employer's entire business it might be argued that there were no "employees" to be thereafter deprived of the rights of self-organization and collective bargaining because all employment had ceased altogether. Here the Deering Milliken complex continued to employ workers in other mills, who might wish to bargain collectively but who would surely be intimidated by the living proof of Deering

Milliken's determination to close a mill if necessary to prevent bargaining with a union. No one who reads the reprint of the article which Roger Milliken circulated describing the three Milliken mills closed upon unionization can doubt his intent to spread the evidence of his determination to the communities in which other Milliken mills were located, thus coercing and restraining those who did continue to be employees of the Milliken complex.

The court of appeals argued that, since "the fundamental purpose of the National Labor Relations Act is to preserve and protect the rights of both industry and labor so long as they are in the relationship of employer and employee" (VI R. 1899), the Act does not apply to the total and permanent dissolution of that relationship, whatever the reason. Even if we assume *arguendo* the court's definition of the scope of the Act,[*] this case satisfies it.

Since the 27 mills in the Deering Milliken complex were all a single employer for the purposes of the Act and all but the Darlington mill were kept in operation, there remained a continuing employment relationship to be affected, then and thereafter, by the coercive anti-union closing of the Darlington mill. The employees remaining in that relationship could enjoy full

[*] The Board's holding (R. 9–18) that an employer who abandons his whole business as reprisal for the union activities of his employees violates Sections 8(a) (1) and (3) makes it plain that the Board would not accept the court of appeals' reasoning, but we find it unnecessary to argue the point since the Board's other findings make it plain that this employer did not abandon its entire business.

freedom of choice, unintimidated by their employer's reprisals at Darlington, only if the Board awarded an effective remedy for the discrimination and interference, coercion and restraint. By the court of appeals' own definition of the scope of the Act, therefore, the closing of the Darlington mill was within its province.

II. THE BOARD HAS POWER TO GRANT EFFECTIVE REMEDIES FOR THE UNFAIR CLOSING OF ONE OF THE SEVERAL UNITS OF AN EMPLOYER'S BUSINESS, INCLUDING REINSTATEMENT TO EMPLOYMENT OR PREFERENCE IN HIRING IN THE REMAINING OPERATIONS AND REIMBURSEMENT FOR LOST PAY

The court of appeals suggested, as one of the reasons for holding that the employer's closing of the Darlington Mill did not violate Sections 8(a) (1) and (3), that there would be difficulty in framing a valid remedial order (VI R. 1899). Whatever may be the case where the employer's entire business is liquidated, there is no serious obstacle to framing a fair and effective remedy where the same employer continues to operate other major units of the business.

Section 10(c) empowers the Board to order an employer who has been found guilty of an unfair labor practice—

> to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

The Board is to draw upon its experience with the practical workings of industrial relations and must take "fair account, in a civilized legal system, of every socially desirable factor in the final judgment."

Phelps Dodge Corp. v. *National Labor Relations Board,* 313 U.S. 177, 198.

Restoration of the *status quo ante* the unfair labor practice, insofar as just and practicable, plus compensation of the employees' losses, will ordinarily tend best to effectuate the policies of the Act. It deprives the employer of the fruits of wrongdoing and thus discourages repetition. *Franks Bros. Co.* v. *National Labor Relations Board,* 321 U.S. 702, 705. It also secures employees' freedom in the exercise of their statutory rights, by assuring them that the law, despite inevitable delays in enforcement, will put them as nearly as possible in the same situation as if the law had been obeyed.

Where part of an employer's business has been abandoned in violation of Sections 8(a) (1) and (3) as reprisal for electing to bargain collectively, exact restoration of the *status quo ante* would require an order to resume the abandoned portions of the business. In some instances such orders may be practicable. *E.g., National Labor Relations Board* v. *Preston Feed Corp.,* 309 F. 2d 346, 351–352 (C.A. 4) (resumption of trucking operations); cf. *Fibreboard Paper Products Corp.* v. *National Labor Relations Board,* No. 14, this Term (resumption of maintenance operations unilaterally abandoned in violation of duty to bargain). In other cases an order requiring resumption of the discontinued operation may be utterly impracticable or so burdensome to the employer as to be substantially unjust. That might be true, for example, where a plant was liquidated, the machinery and real estate were sold, and relations terminated

with customers and suppliers. In most cases the Board would have to weigh the advantages and disadvantages of full restoration of the *status quo* against the merits and demerits of less stringent measures.

In the present case the Board ordered restoration of the *status quo* to the fullest extent possible without reopening the Darlington mill and unduly prejudicing other innocent employees. It directed Deering Milliken, the employer, to rehire the Darlington employees at other mills, paying the expenses of their transportation, or, where enough work was not available to give them all immediate employment, to put them on a preferential list for hiring. This was the same course Deering Milliken followed in dealing with managerial personnel at Darlington who lost their jobs as a result of the closing (VI R. 1913–1914). The end result was doubtless an accommodation of conflicting considerations. Resumption of the Darlington operation would have required respondents to purchase a new plant and equipment and to hire a new supervisory staff. Immediate placement at other mills might have necessitated the discharge of innocent third parties employed at these locations. Thus, the Board had to balance the need for restoring the employees to the positions they would have occupied but for the unfair labor practice against the dislocation of the employer's business which would have resulted from that remedy. See *Williams Motor Co.* v. *National Labor Relations Board,* 128 F. 2d 960, 965 (C.A. 8). The accommodation made by the Board manifestly tends to restore the *status quo* and to cancel some of the advantage respondents sought to derive

from the unfair labor practices, while also taking account of the risk of injustice to the employer and its other employees. It is analogous to the remedies granted in similar situations."[41]

The provision of the order requiring Deering Milliken to bargain with the Union about implementation of the preferential hiring and relocation system was also an appropriate step towards recreating the conditions that would have existed if respondents had complied with the Act. Since the Union had proven its majority status in the election which provoked respondents into closing the Darlington plant, and, since any loss of such status thereafter was attributable to the unlawful decision and announcement to close the plant, the Union was entitled to represent the plant's employees in all matters pertaining to their conditions of employment. See *National Labor Relations Board* v. *Katz*, 369 U.S. 736, 748, n. 16.

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[41] See *National Labor Relations Board* v. *Missouri Transit Co.*, 250 F. 2d 261, 263–265 (C.A. 8); *National Labor Relations Board* v. *Wallick*, 198 F. 2d 477, 482 (C.A. 3); *National Labor Relations Board* v. *Mackneish*, 272 F. 2d 184 (C.A. 6), enforcing *per curiam*, *Industrial Fabricating, Inc.*, 119 NLRB 162, 172–173; *National Labor Relations Board* v. *Gerity Whitaker Co.*, 137 F. 2d 198 (C.A. 6), certiorari denied, 318 U.S. 763, enforcing as to this point, 33 NLRB 393, 420; *National Labor Relations Board* v. *Schieber*, 116 F. 2d 281 (C.A. 8), enforcing as to this point, 26 NLRB 937, 966–967; *Philadelphia Dress Joint Board, International Ladies' Garment Workers' Union, AFL–CIO* v. *National Labor Relations Board*, 305 F. 2d 825 (C.A. 3), enforcing *per curiam*, *Sidele Fashions, Inc.*, 133 NLRB 547, 554–556; *National Labor Relations Board* v. *Lexington Electric Products Co.*, 283 F. 2d 54, 56–57 (C.A. 3), certiorari denied *sub nom. Local 3, International Brotherhood of Electrical Workers, AFL–CIO* v. *National Labor Relations Board*, 365 U.S. 845.

Section 10(c) also gives the Board express power to award back pay to employees who have lost their jobs as the result of an unfair shut-down of one unit of an employer's business. The remedy goes part way to compensate the employees, but it is not unfair to the employer. If the award seems large, it is large because of the scale on which injury was inflicted. Nor is it an objection that the respondents had an arguable legal defense—accepted by a majority of the court of appeals—to the unfair labor practice charge. First, the same can be said of every litigated case involving back-pay awards. In each instance, the employer asserts some defense which is ultimately rejected on judicial review of the Board's order; yet the defense does not free him of the back-pay obligation.[42] Moreover, the present case involves a particularly egregious course of antiunion activity. The unfair labor practice charge is not the product of an isolated impropriety or good-faith omission by an employer. If, in fact, respondents constitute a single employer, the conduct complained of amounted to a flagrant violation of Sections 8(a)(1) and (3) of this Act. Finally, in the present situation the Board was unable to restore the former Darlington employees fully to their prior status without requiring the plant to be reopened. Since it could provide only a partial reinstatement remedy—by requiring job offers or preferential listing at other

[42] See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48–49; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U.S. 177, 197–198; *National Labor Relations Board* v. *Seven-Up Bottling Co.*, 344 U.S. 344.

plants—it could balance this deficiency by granting a full back-pay award. Hence it was entirely appropriate for the Board, in giving "coordinated effect to the policies of the Act," *National Labor Relations Board* v. *Seven-Up Bottling Co.*, 344 U.S. 344, 348, to strike the balance on back-pay in favor of the former Darlington employees and issue an award which would make them whole up to the time when they could find substantially equivalent employment, or were placed on a preferential hiring list at the other Deering Milliken plants.

Whether the same remedies would be suitable in another case is a question that can be safely left to the future. Nor do we seek to anticipate questions which may be raised, on remand, in the court of appeals. The important point, for present purposes, is that the Board has ample power to frame fair and practicable remedies for the unfair labor practice of shutting down even a more-or-less self-contained unit of the employer's business in reprisal for union activities. The Board has devised similar remedies in analogous cases.[43] Questions concerning the Board's remedial powers, therefore, furnish no ground for doubt whether such a closing is an unfair labor practice.[44]

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[43] See cases cited in n. 41, p. 46, *supra*.

[44] There is no merit to the Union's contention that the Board's order should have run against Roger Milliken individually (Petition, No. 37, pp. 19–21). Since the order is directed to the various corporations, and "their officers, agents, successors, and assigns" (R. 30), it clearly covers Roger Milliken in his capacity as an officer or agent of the corporations.

CONCLUSION

For the reasons stated, the judgments denying enforcement of the Board's order should be reversed, and the case remanded to the court of appeals for further proceedings.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

NANCY M. SHERMAN,
Attorney,
National Labor Relations Board.

SEPTEMBER 1964.

The only charge made against Roger Milliken was in his capacity as president of Darlington (R. 1241, Tr. 10), and the charge referred to "employer" in the singular. Nor can it be argued that he was there named, like Deering Milliken & Co., as a separate component of the "single employer." Nowhere in this charge was it suggested that Roger Milliken individually was equivalent to one of the Deering Milliken corporate plants or a separate arm of the single organization. In these circumstances the Board properly concluded that timely notice had not been given to Roger Milliken that an attempt was being made to subject him to personal liability for the unfair labor practices committed at the Darlington mill (R. 29–30).

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, et seq.) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *.

* * * * *

SEC. 10. (b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided,* That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

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v.

DARLINGTON MANUFACTURING COMPANY, *et al.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR TEXTILE WORKERS UNION OF AMERICA

IRVING ABRAMSON
EVERETT E. LEWIS
DONALD GRODY
LEONARD GREENWALD
19 West 44th Street
New York 36, New York
Attorneys for Petitioner Textile Workers Union of America, AFL-CIO

INDEX

	PAGE
Opinion Below	1
Jurisdiction	2
Statute Involved	2
Questions Presented	2
Statement	3
A. The Facts	3
(1) Ownership and Control of Deering Milliken and Darlington	3
(2) The Election Campaign at Darlington and the Resultant Unfair Labor Practices.	4
B. Prior Proceedings, the Board's Order and Remedy, and the Decision of the Court Below	7
(1) The Prior Proceedings	7
(2) The Board's Decision and the Remedy Ordered	7
(3) The Decision of the Court of Appeals	9
Summary of Argument	10
POINT I—It is a violation of the Act for an employer to shut down a plant in order to discourage union activity and to avoid having to bargain with a union	14

PAGE

POINT II—The Board's finding that Darlington and the other Deering Milliken corporations together constituted a single employer is supported by substantial evidence and entitled to judicial approval 15

A. The Controlling Board and Court Precedents 16

B. The Board's Single Employer Finding Is Supported by Substantial Evidence 18

(1) Common Ownership 19

(2) Common Control and Integration of Operations 19

(a) Coordination of Sales and Factoring Functions 20

(b) Deering Milliken Represented to Customers and the Public as a Single Enterprise 20

(c) The Service and Research Corporations 21

(d) Coordination of Cost Reduction Efforts 22

(e) Common Control of Purchasing 23

(f) The Deering Milliken Tax and Insurance Departments 24

(g) Coordination of Capital Expenditures 25

(h) Interchange of Supervisory Employees 25

(i) Roger Milliken's Central Role.. 26

(3) Common Control of Labor Relations 27

PAGE

POINT III—The remedies of back pay and preferential hiring for Darlington workers at other Deering Milliken mills are not appropriate or adequate in that they fail to rectify the unfair labor practices committed in shutting down the Darlington mill 30

A. The Egregious Character and Widely Coercive Effect of the Unfair Labor Practices 30

B. The Board Possessed Ample Power to Restore the *Status Quo Ante* at Darlington 34

C. The Board's Misguided Attempt to Strike a Balance Between the "Conflicting Interests" of the Guilty Employer and the Innocent Victims of the Discriminatory Plant Shutdown 38

POINT IV—The Board erred in refusing to hold Roger Milliken individually liable for the Deering Milliken unfair labor practices 43

A. The Record Establishes Roger Milliken's Intimate Involvement in and Supports His Liability for the Unfair Labor Practices Committed at Darlington 43

B. The Unfair Labor Practice Charge Against "Roger Milliken, President" Furnished a Sufficient Basis for Holding Roger Milliken Personally Liable 46

Conclusion 48

PAGE

Appendix:

National Labor Relations Act 1a

Labor Management Relations Act 3a

TABLE OF CASES

American Air Filter Co., 127 NLRB 116 37

A. M. Andrews Company of Oregon v. *NLRB*, 236 F.2d 44, 45 (9th Cir.) 18

Bonnie Lass Knitting Mills, Inc., 126 NLRB 1396 36

Butler Bros., 41 NLRB 843, enforced 134 F.2d 981 (7th Cir.), *cert. den.* 320 U.S. 789 ..... 37n

Bynum v. *Prudential Life Ins. Co.*, 77 F. Supp. 56 (E.D.S.C.) 14, 33, 47

Clark v. *Porcelain Mfg. Co.*, 8 S.C. 22 47

Cookville Shirt Company, 79 NLRB 667 44

Deering Milliken v. *Johnston*, 295 F.2d 856 (4th Cir.) 15n

Deluxe Motor Stages, 93 NLRB 1425, enf. 196 F.2d 409 (6th Cir.) 47

Fibreboard Paper Products Corp. v. *NLRB*, No. 14 this Term 39

Ford Motor Company, 31 NLRB 995 32

Franks Bros. v. *NLRB*, 321 702 ..... 38, 39

Houston Chronicle Publishing Company, 101 NLRB 1208 ..... 37n

Hugh Major Truck Service, 129 NLRB 322, enf. in pertinent part, 296 F.2d 466 (7th Cir.) .. 36

PAGE

Industrial Fabricating, Inc., 119 NLRB 162, 14, 30, 44

Jays Foods, Inc., 129 NLRB 690, enf. denied on other grounds, 292 F.2d 317 (7th Cir.) 36

Local 833 UAW v. *NLRB*, 300 F.2d 699 (D.C. Cir.) 35n

Majestic Molded Products v. *NLRB*, 330 F.2d 603 (2nd Cir.) 17, 18

Mount Hope Finishing Company, 106 NLRB 480, rev. for reasons not here relevant 211 F.2d 365 (4th Cir.) 44

NLRB v. *Bank of America*, 130 F.2d 624 (9th Cir.), enfg. 26 NLRB 198 ..... 37n

NLRB v. *Bradford Dyeing Assn.*, 310 U.S. 318... 35

NLRB v. *Brown-Dunkin Co.*, 287 F.2d 17, 19 (10th Cir.), enfg. 125 NLRB 1379 37

NLRB v. *Calcasieu Paper Co., Inc.*, 203 F.2d 12, 13 (5th Cir.)..... 18

NLRB v. *Condenser Corp.*, 128 F.2d 67, 71-72 (5th Cir.) 18

NLRB v. *Cosmopolitan Studios, Inc.*, 291 F.2d 110 (2nd Cir.) 35n

NLRB v. *Deena Artware, Inc.*, 361 U.S. 398 ...11, 17

NLRB v. *District 50 UMW*, 355 U.S. 453 35

NLRB v. *Falk Corp.*, 308 U.S. 453 35

NLRB v. *Fant Milling Co.*, 360 U.S. 301.....14, 47

NLRB v. *Gibraltar Industries, Inc.*, 307 F.2d 428, *cert. den.* 372 U.S. 911.....11, 16, 18

NLRB v. *Greyhound Pacific Stages, Inc.*, 303 U.S. 272 35

NLRB v. *Lewis*, 246 F.2d 996 (9th Cir.) 36

PAGE

NLRB v. *Link Belt Co.*, 311 U.S. 584 35
NLRB v. *Local 751 Carpenters*, 285 F.2d 633 (9th Cir.) 35n
NLRB v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333 35
NLRB v. *Missouri Transit Co.*, 250 F.2d 261 (8th Cir.) 11, 36
NLRB v. *A. E. Nettleton Co.*, 241 F.2d 180 (2nd Cir.) 17
NLRB v. *Norma Mining Corp.*, 206 F.2d 38 (4th Cir.) 11
NLRB v. *Preston Feed Corp.*, 309 F.2d 346 (4th Cir.) 13, 39
NLRB v. *Radcliffe*, 211 F.2d 309, 313 (9th Cir.), *cert. den.* 348 U.S. 833 18
NLRB v. *Savoy Laundry, Inc.*, 327 F.2d 370 (2d Cir.) 11, 13, 39, 39n
NLRB v. *Seven Up Bottling Co.*, 344 U.S. 344 .. 35
NLRB v. *Somerset Classics, Inc.*, 193 F.2d 613 (2d Cir.), *cert. den.* 344 U.S. 816 ..... 11, 16, 17
NLRB v. *Stowe Spinning Co.*, 336 U.S. 226, 227, n. 2 18
NLRB v. *Television & Radio Artists*, 285 F.2d 902 (6th Cir.) 35n
NLRB v. *Wollick and Schwalm Co.*, 198 F.2d 477 (3rd Cir.) 36

Phelps Dodge Corp. v. *NLRB*, 313 U.S. 177 .. 13, 34, 39
Preston Feed Corp., 309 F.2d 346 (4th Cir.) 37

R. C. Mahon Company, 118 NLRB 1537, enf. denied on other grounds, 269 F.2d 44 (6th Cir.) 13, 36, 37, 42

PAGE

Ravena Sportswear, 142 NLRB No. 129, *aff'd.* in pertinent part *sub nom. Oneonta Dress Co.* v. *NLRB*, not officially reported, 332 F.2d —, 56 LRRM 2497 (2nd Cir.) 17

Republican Publishing Company, 73 NLRB 1085, enf. 174 F.2d 474 (1st Cir.) 44

Rowe Products Company, 77 NLRB 1217 37

Schieber Millinery Company, 26 NLRB 937 44

Sidele Fashions, Inc., 133 NLRB 547, enf. 305 F.2d 825 (3rd Cir.) 36

Southern Steamship Co. v. *NLRB*, 316 U.S. 31 .. 35

Southland Manufacturing Company, 94 NLRB 813, 829 44

Taubman, Edward, 77 NLRB 846 44

Universal Camera Corp. v. *NLRB*, 340 U.S. 474.. 16

OTHER AUTHORITIES CITED

Economic Almanac, p. 273 National Industrial Conference Board, 1964 40

Labor Management Relations Act of 1947, Section 1(b) 3a

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. § 141 *et seq.*):

Section 2(2) 14, 43, 1a

Section 2(3) 1a

Section 8(a)(1) 7, 8, 9, 10, 30, 1a

Section 8(a)(3) 7, 8, 10, 31, 38, 1a, 2a

PAGE

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. § 141 *et seq.*) (Continued):

Section 8(a)(5) 7, 8, 10, 2a
Section 7 ..... 31, 1a
Section 9(a) 2a
Section 10(b) 43
Section 10(c) 13, 30, 34, 35n, 2a
Section 10(e) 2
Section 10(f) 2, 2a, 3a

28 U.S.C. 1254(1) 2

U.S. Bureau of the Census, County & City Data Book, 1962 (A Statistical Abstract Supplement), U.S. Govt. Printing Office, Washington, D.C., 1962 ..... 33n

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR TEXTILE WORKERS UNION OF AMERICA

Opinion Below

The opinion of the Court of Appeals is reported at 325 F.2d 682 (R. 1894-1914).* The amendment to

* References to the Record preceding semicolon are to the Board's Findings; succeeding references are to the supporting evidence. References to Volume V of the Record are cited as "R.V.....".

the original opinion is found at R. 1916-1917. Findings of fact, conclusions of law, and the decision and order of the National Labor Relations Board are reported at 139 NLRB 241 (R. 1-246).

Jurisdiction

The judgments of the Court of Appeals were entered on November 19, 1963 (R. 1915, 1926-1927, 1933-1934). The petitions for writs of certiorari were granted on April 20, 1964, 377 U.S. 903, and the cases consolidated (R. 1935). Jurisdiction rests upon 28 U.S.C. 1254(1) and §10(e) and (f) of the National Labor Relations Act ("NLRA" or "Act") as amended.

Statute Involved

The provisions of the NLRA, as amended (61 Stat. 136, 29 U.S.C. §141 *et seq.*), and the Labor Management Relations Act of 1947 are set forth in relevant part in an appendix *infra*.

Questions Presented

1. Whether it is a violation of the National Labor Relations Act for an employer to shut down a plant in order to discourage union activity and to avoid having to bargain with the union (a) when the plant closed constitutes a separate business entity, and (b) when the plant is one of several constituting a single employer entity.

2. Whether the Board's finding that Darlington and the other Deering Milliken corporations together constituted a single employer entity, is supported by substantial evidence and entitled to judicial approval.

3. Whether the Board fashioned appropriate and adequate remedies in directing that the former Darlington workers be re-employed or placed on preferential lists for hiring at other Deering Milliken plants and that they be given back pay from the date of discharge, or whether such remedies are patently inadequate absent a further order directing the re-establishment of a plant in Darlington, South Carolina.

4. Whether the Board erred in failing to hold Roger Milliken individually liable for the unfair labor practices committed by the employer.

Statement

A. The Facts

(1) Ownership and Control of Deering Milliken and Darlington

Darlington Manufacturing Company at the time of its shutdown and liquidation in December 1956 was one of 17 corporations operating textile mills owned and controlled by the Milliken family for whom Deering, Milliken & Company, Inc. acted as the exclusive sales agent and factor. (R. 110, 111). The Millikens then held a majority of the stock in Deering, Milliken & Company, Inc. and Cotwool Manufacturing Com-

pany,* and the Darlington stockholdings of the Milliken family, Deering Milliken and Cotwool together represented more than two-thirds of Darlington's outstanding stock (R. 23, 24, 213; 236-237, 1292-1300, 1308-1311).

The sole Darlington plant, which was located in Darlington, South Carolina (R. 51), primarily manufactured cotton printed cloth, as did three of the other mills in the Deering Milliken** complex (R. 25; 514-520, 522, 933, 935-936, 938-939).

(2) The Election Campaign at Darlington and the Resultant Unfair Labor Practices

When in March 1956 the Textile Workers Union of America, AFL-CIO (the "Union" or "TWUA") commenced its organizing campaign at the Darlington mill, petitioning the Board for a representation election (R. 4, 52), Darlington supervision immediately responded with threats that Roger Milliken would close down the mill if the Union won the election, stating that he had done so at other Deering Milliken mills which became unionized (R. 4, 6-7, 25; 325, 326-327, 344, 345-346, 350, 354-355, 361-363, 370). The workers were also subjected to systematic interrogation concerning their Union activity, and Union adherents were threatened with discharge and blacklist-

* Subsequently, in an internal reorganization, Deering Milliken & Company merged with Cotwool to form Deering Milliken, Inc. However, this merger had no effect on the operation or functions of the corporations within the Deering Milliken complex (R. 1332, 1872-1882).

** "Deering Milliken" refers to the entire complex of manufacturing and affiliated service corporations controlled by the Milliken family unless it is clear from the context that the reference is to the factoring and sales agency.

ing (R. 4, 6-7, 77; 303, 305, 313, 316, 317, 327, 334, 339, 345, 350, 354-356, 365, 376-377, 488-489, 490). Despite this blatant and unlawful interference and coercion, a majority of the workers, on September 6, 1956, voted in favor of the Union (R. 4; 250-251).

Roger Milliken, upon being informed of the Union victory, immediately determined to shut down the Darlington plant (R. 5; 263) and proceeded to set up a meeting to secure the approval of the Darlington directors (R. 4; 263, 422-425, 456-457, 464, 472, 476-477). On September 12, 1956, Darlington's seven-man Board of Directors, at a hastily convened and indecently brief meeting, dutifully voted to liquidate the mill and to call a special stockholders' meeting to approve that proposal (R. 5; 279-280; 431, 1257-1261, 1290, 1322). Upon being advised of the directors' decision, Darlington's supervisors told the workers that Roger Milliken had decided to close the mill because of the Union's NLRB victory and that they would be blacklisted from employment at other mills (R. 5, n.10, 6; 314, 327, 351-353, 357, 359, 370). At the same time supervisors solicited support for a petition disavowing the Union which was circulated in the hope of keeping the mill open (R. 5, n.10, 6; 323-324, 337, 359-360, 368-369, 381-383).

At the October 17th stockholders' meeting, Roger Milliken bluntly stated that the Darlington mill was being shut down because of the Union's election victory (R. 5; 292, 1262-1265), and an overwhelming majority of the stock was voted in favor of liquidation (R. 5; 438, 494-495, 1292, 1295. 1296-1300). In a conference held immediately following the stockholders' meeting, a State Senator who had been

present pleaded with Roger Milliken to reconsider, pointing out the disastrous repercussions of the shutdown on the City of Darlington, and arguing that the decision was "unfair" because 83% of the Darlington workers had "signed a petition to go back to work" (R. 5; 266). Roger Milliken responded: "As long as there are seventeen percent of the hard core crowd here, I refuse to run the mill" (R. 6; 266, 268).

On October 25, 1956, the Union notified Darlington that the Board certification had been received and requested that a bargaining conference be scheduled no later than October 30th (R. 253, 1244). When Darlington management ultimately met with the Union on November 7th they refused to discuss the Union's suggestions aimed at maintaining mill operations and preserving the jobs of the Darlington workers and declined to furnish the Union with information concerning the scheduling of layoffs which were then proceeding in anticipation of the ultimate plant shutdown (R. 71; 254-257, 1246-1253).

Plant operations ceased entirely on November 24, 1956, and on December 12th and 13th the plant was auctioned off piecemeal (R. 6; 258) despite the Union's earlier plea that an effort be made to secure a purchaser for the entire, equipped plant (R. 255). Thereafter, other mills in the Deering Milliken complex assumed Darlington's unfulfilled contracts or increased their sales to Darlington's former customers under new contracts (R. 928, 933-967).

In the meantime the treasurers of the remaining Deering Milliken mills were sent copies of a memorandum by Roger Milliken (characterized by the

Board (R. 25) as a "primer" for combatting union organizing), warning that unions were "going to make a tremendous drive all through this area and there are few things that are more important to us than making sure that the leaders in your community are sympathetic to what you are trying to do." Enclosed with this memorandum was a portion of a magazine article citing the Darlington shutdown and affirming that it had always been Deering Milliken's policy to shut down unionized mills (R. 25; 969, 1677).

B. Prior Proceedings, the Board's Order and Remedy, and the Decision of the Court Below

(1) The Prior Proceedings

On the basis of charges filed with the Board during the months of October and November, 1956, alleging violations of Sections 8(a)(1), 8(a)(3) and 8(a)(5), a complaint was issued on December 4, 1956 and hearings were held in January and February, 1957. The further history of all the proceedings before the Board and Trial Examiner, as well as ancillary court proceedings, are fully set forth in the Board's Decision and Order (R. 1-3).

(2) The Board's Decision and the Remedy Ordered

The Board unanimously found that Darlington violated Section 8(a)(1) by interrogating employees concerning their Union activity, by threatening to close the mill if the TWUA won the election, by representing that the reason for the shutdown was the employees' activity in behalf of the Union, and by encouraging employees to sign a petition disavowing

the Union (R. 6-7). The Board also was unanimous in finding that Darlington violated Section 8(a)(5) by its refusal to bargain with respect to the tenure of employment of the workers in the Darlington mill and by the refusal to furnish wage and related bargaining information to the Union (R. 6-9, 19).

With member Rodgers dissenting, the Board further found that the Darlington plant shutdown had been retaliatory and motivated by anti-union considerations and thus constituted a violation of Sections 8(a)(1), (3) and (5) (R. 9-18).

Finally, with members Leedom and Rodgers dissenting, the Board found that Darlington, together with Deering Milliken and its affiliated corporations, constituted a single employer within the meaning of the Act because of common ownership and common control of labor relations and operations, thereby rendering Deering Milliken liable for the violations found against Darlington (R. 23, 27).

As to Roger Milliken individually, the Board unanimously dismissed the complaint on the ground that the underlying charge was insufficient in that it named him as "Roger Milliken, President" and that this did not constitute a sufficient charge against Roger Milliken individually (R. 29-30).

In its order, the Board required Darlington and Deering Milliken to cease and desist from the unfair labor practices found; and, if operations were resumed in Darlington, South Carolina, to bargain with the Union as the employees' exclusive representative (R. 30-31). Darlington and Deering Milliken were

further required to make whole all the employees who were on the payroll on Octobr 13, 1956 (the date on which the stockholders voted to liquidate the plant) for any loss of pay they had suffered as a result of the discrimination against them. If the Darlington plant were not reopened, the backpay period was to terminate when the employees are able to obtain substantially equivalent employment, or the date on which they are placed on a preferential hiring list at other Deering Milliken mills (R. 21-23, 27-28, 31, 32). Deering Milliken was required to offer the Darlington employees employment, or placement on a preferential hiring list, at other Deering Milliken mills in South Carolina or adjacent States; to pay the travel and moving expenses of the employees who accepted the offer; and to bargain collectively with the Union for the purpose of reaching an agreement as to the operation of the preferential hiring lists, and as to the terms and conditions under which the former employees of the Darlington mill might, if they desired, obtain such employment (R. 27-29, 32-33). Finally, Darlington and Deering Milliken were required to advertise in a Darlington newspaper and to mail and publish appropriate notices directed to the Darlington employees (R. 32-33, 39-42).

(3) The Decision of the Court of Appeals

The Court of Appeals, sitting *en banc*, by a 3-2 vote denied enforcement of the Board's order.

As to the violations found by the Board independent of the actual mill closing—the pre- and post-election statements constituting interference and violation of Section 8(a)(1), and the refusals to bargain

constituting violations of Section 8(a)(5), of the Act —a majority of the Court held that "remedies for these offenses are not now available as Darlington is no longer alive" (R. 1902). Reasoning that an employer has the "absolute prerogative" to "go out of business in toto or to discontinue it in part, permanently at any time," the majority held that there would be no unfair labor practice even if the shutdown were "spurred by unionization." (R. 1900)

The dissenting judges would have enforced the Board's order. In their view, "overwhelming" evidence supported the Board's finding that Darlington and Deering Milliken were a single employer; "abundant" evidence supported the Board's finding that the plant was shut down because of the employees' union activities and as a "grim deterrent to the thousands of employees in the [Deering Milliken] plants who might entertain similar notions of unionization"; and the shutdown of the Darlington mill was the equivalent of an employer's transferring or contracting out part of his operation in order to defeat a union, violative of Section 8(a)(3) of the Act. The dissenting judges also agreed, as the Board found, that the shutdown violated Sections 8(a)(1) and (5).

Summary of Argument

I

The holding by the court below that the employer had an absolute right to shut down its Darlington plant does violence to the underlying policy and the express language of the Act. The Board, with subse-

quent court approval, has repeatedly held the liquidation of a portion of a business unlawful when actuated by anti-union animus. *NLRB* v. *Missouri Transit Co.*, 250 F.2d 261 (8th Cir.). It matters not whether the employer's anti-union shutdown involves its entire plant, *NLRB* v. *Norma Mining Corp.*, 206 F.2d 38 (4th Cir.), one of several plants, *NLRB* v. *Somerset Classics, Inc.*, 193 F.2d 613 (2d Cir.), *cert. den.* 344 U.S. 816, or merely a part of the business, *NLRB* v. *Savoy Laundry, Inc.*, 327 F.2d 370 (2d Cir.).

II

Where, as here, the Board's finding that Darlington and the other Deering Milliken corporations together constituted a single employer is supported by substantial evidence, the courts should accord such finding judicial approval. *NLRB* v. *Gibraltar Industries, Inc.*, 307 F.2d 428 (4th Cir.), *cert. den.* 372 U.S. 911. Moreover, the Board's findings on the issue of single employer status fall well within the substantive guides established by this Court. *NLRB* v. *Deena Artware, Inc.*, 361 U.S. 398.

A review of the evidence on this issue establishes not only common ownership of the affiliated Deering Milliken corporations and the exercise of tight central control over the labor relations of the affiliates, but moreover an extraordinary degree of control and integration of the various operations of such corporations. Such control is operative as to sales and factoring functions, cost reduction efforts, joint purchasing, tax and insurance services, and the coordination of capital expenditures. The Board finding is further buttressed by Roger Milliken's personal involvement in

virtually all phases of the operation, the continued interchange of management personnel between the affiliates, and the fact that the Deering Milliken group represented itself to both the public and its employees as a single cohesive enterprise.

III

The enforcement of the modest remedy ordered by the Board would fall far short of expunging the coercive impact of the unfair labor practices involved in the Darlington shutdown. This the Board implicitly acknowledges. The egregious character and widely coercive effect of those unfair labor practices was readily perceived by both the Board and the dissenting Judges hereinbelow. The truly singular aspect of the unfair labor practices is that the employer deliberately set out to obliterate the Darlington plant as an object lesson to the thousands of workers employed in its other southern mills and to the communities in which those mills were located. The inadequacy of the Board's remedy is best demonstrated by considering the lesson that will be thereby taught other southern textile workers, the mill town communities, and large textile mill owners. The back pay and preferential hiring remedy offers little effective relief to either the Darlington workers or the stricken Darlington community, and for that reason the Board order will have virtually no deterrent effect upon this or other anti-union employers.

The "usual" and "most effective" Board remedy, where it finds that workers have been discriminatorily discharged, is a direction that they be reinstated with

back pay. Where the discharges have been effected via shutting down part of the business, the remedy necessarily includes a resumption order. *NLRB* v. *Preston Feed Corp.*, 309 F.2d 346 (4th Cir.); *R. C. Mahon Company,* 118 NLRB 1537. However, it is incumbent upon the Board to take into fair account "every socially desirable factor" in fashioning its remedy, *Phelps Dodge Corp.* v. *NLRB,* 313 U.S. 177, 198 and there are some discriminatory discharge cases involving the discontinuance of a portion of a business where an order directing the resumption of operations would be impracticable or unduly burdensome upon the employer. *NLRB* v. *Savoy Laundry, Inc.*, 327 F.2d 370 (2d Cir.). There is, however, nothing in the Darlington situation indicating that the re-establishment of a plant at Darlington would impose any unique burden on Deering Milliken. Accordingly, there was no occasion for the Board to depart from the "usual" and "most effective" remedy. The Board's failure to fashion that one and only remedy which would fully restore the *status quo ante* at Darlington constituted an arbitrary refusal to exercise its power under 10(c) of the Act.

IV

The Board's dismissal of the complaint against Roger Milliken individually was completely unjustifiable. Neither the Trial Examiner, the Board nor the Circuit Court suggested that evidence was lacking of Roger Milliken's personal unlawful involvement in the employer unfair labor practices found. The Board's decision that the charge naming "Roger Milliken, President" together with Darlington and Deering

Milliken as "the employer," was not against Roger Milliken in his individual capacity, is contrary to the well established rule that unfair labor practice charges shall not be narrowly viewed as pleadings. *NLRB* v. *Fant Milling Co.*, 360 U.S. 301. Moreover, even from a technical pleading standpoint the word "President" following "Roger Milliken" is merely *descriptio personae*. *Bynum* v. *Prudential Life Ins. Co.*, 77 F. Supp. 56 (E.D.S.C.). The record fully warrants Roger Milliken being held personally responsible for his key role in the Darlington unfair labor practices. To do so would be consistent with Section 2(2) of the Act as construed by the Board. *Industrial Fabricating Inc.*, 119 NLRB 162.

POINT I

It is a violation of the Act for an employer to shut down a plant in order to discourage union activity and to avoid having to bargain with a union.

By arrangement with the *amicus curiae*, American Federation of Labor and Congress of Industrial Organizations, the briefing of this point is left entirely to the amicus. We fully subscribe to and rely upon the brief *amicus curiae* for our own argument under this point.

POINT II

The Board's finding that Darlington and the other Deering Milliken corporations together constituted a single employer is supported by substantial evidence and entitled to judicial approval.

The majority of the Court below, having held that an employer may cease business in whole or in part for any reason, including anti-union bias, merely accepted *arguendo* the Board's finding that Darlington together with the Deering Milliken corporations constituted a single employer within the meaning of the Act.* However Chief Judge Sobeloff and Judge Bell in their dissent reviewed the record as a whole and found "that there was an abundance of evidence" to support the Board's finding of a single employer entity (R. 1908).

This point is hopefully and urgently directed toward convincing the Court that the Board's single employer finding is entitled to judicial approval here

* Earlier, in an ancillary proceeding, the Fourth Circuit Court did have occasion to rule on the issue of the ownership and control of the Deering Milliken complex. (*Deering Milliken* v. *Johnston*, 295 F.2d 856 (4th Cir.)). Thus when Cotwool and Deering Milliken and Company merged, the Board remanded to the Trial Examiner with a direction to take testimony on the merger. A District Court, at the instance of the employer, thereupon enjoined the remand. In vacating, the Court of Appeals (comprised of Chief Judge Sobeloff and Judges Haynesworth and Boreman, the latter two being in the majority in the case at hand) unanimously held that the Milliken family through majority stock ownership exercised "effective control" over the various Deering Milliken corporations. It would thus appear that no less than four of the five Circuit Judges below have certified the common ownership and control of Deering Milliken.

and now. To accord such approval manifestly entails an examination of the evidence before the Board and we are indeed reluctant to urge this over-burdened Court to involve itself in the review of a very substantial record. However, this appears to be one of those "justice delayed is justice denied" situations and both the seemingly interminable course of this litigation and the increasingly desperate plight of many Darlington workers permit us to seek nothing less than the final adjudication of all outstanding issues.

Before turning to a review of the evidence in the record supporting the Board's single employer finding, a brief recapitulation of the applicable precedents is deemed in order.

A. The Controlling Board and Court Precedents

It is well established that in reviewing Board findings, a court may not "displace the Board's choice between two fairly conflicting views even though the court would justifiably have made a different choice had the matter been before it *de novo.*" *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 488. Moreover, a Board determination that a group of associated corporations constitutes a single enterprise answerable for unfair labor practices is entitled to judicial approval if supported by substantial evidence on the record considered as a whole. *NLRB* v. *Gibraltar Industries, Inc.,* 307 F.2d 428, 431 (4th Cir.), *cert. den.* 372 U.S. 911. See also, *NLRB* v. *Somerset Classics, Inc.,* 193 F.2d 613, 615 (2nd Cir.),

cert. den., 344 U. S. 816; *NLRB* v. *A. E. Nettleton Co.*, 241 F.2d 130, 131 (2nd Cir.).

Some of the substantive guides upon which the issue of single employer status must be resolved were indicated by this Court in *NLRB* v. *Deena Artware, Inc.*, 361 U. S. 398, wherein the Court stated:

> "The several companies may be represented as one. Apart from that is the question whether in fact the economic enterprise is one, the corporate form being largely paper arrangements that do not reflect the business realities. One company may in fact be operated as a division of another; one may be only a shell, inadequately financed; the affairs of the group may be so intermingled that no distinct corporate lines are maintained. These are some, though by no means all, of the relevant considerations, as the authorities recognize. See Lattin on Corporations (1959) Secs. 13, 14; Stevens on Corporations (1949) Sec. 17; Berle, The Theory of Enterprise Entity, 47 Col. L. Rev. 343." *Id.* at 403-404 (footnotes omitted).

Among the factors that the Board, with subsequent court approval, has deemed significant in determining single employer status are participation in the unfair labor practices found, association in a common enterprise, representations to the general public and employees that the organization is a single enterprise, integration of operations and common control of labor relations. *NLRB* v. *Deena Artware, Inc., supra* at 402-404; *Ravena Sportswear*, 142 NLRB No. 129, *aff'd.* in pertinent part *sub nom. Oneonta Dress Co.* v. *NLRB*, not officially reported, 332 F.2d —, 56 LRRM 2497 (2nd Cir.); *Majestic Molded Products* v. *NLRB*,

330 F.2d 603, 607 (2nd Cir.); *NLRB* v. *Gibraltar Industries, Inc.*, 307 F.2d 428, 431 (4th Cir), *cert. den.* 372 U.S. 911; *A. M. Andrews Company of Oregon* v. *NLRB*, 236 F.2d 44, 45 (9th Cir.); *NLRB* v. *Calcasieu Paper Co., Inc.*, 203 F.2d 12, 13 (5th Cir.); *NLRB* v. *Condenser Corp.*, 128 F.2d 67, 71-72 (5th Cir.).

It must be emphasized, however, that none of the foregoing elements is essential to a Board determination of single employer status. There is no indispensable criterion. The reviewing court must consider the record as a whole rather than "separately and in isolation" and in so doing, the record must be reviewed in the light of the Board's right to consider facts "compositely and to draw inferences reasonably justified by their cumulative probative effects." *NLRB* v. *Radcliffe*, 211 F.2d 309, 313 (9th Cir.), *cert. den.* 348 U.S. 833. See also *NLRB* v. *Stowe Spinning Co.*, 336 U.S. 226, 227, n. 2.

B. The Board's Single Employer Finding Is Supported by Substantial Evidence

The test utilized by the Board in making its determination that Darlington, Deering Milliken and the affiliated corporations together constituted a single employer was whether "there was a sufficient degree of common ownership and common control of labor relations and operations" (R. 23). Much of the evidence hereinafter cited is uncontroverted, based on stipulation or supported by admission. Indeed virtually none of the findings on the single employer issue turned on questions of credibility (R. 117).

(1) Common Ownership

As we have previously noted (pp. 3-4, *supra*), the Milliken family owned a majority of the stock in all of these corporations, directly or indirectly, and members of the family occupied a very substantial proportion of the offices and directorships (R. 1308-1311; G.C. Ex. A-12). The extent to which the Milliken family exercised control was perhaps most dramatically indicated by the manner in which corporate lines within the organization were altered to suit its convenience (R.V. 1239a; G.C. Ex. R.-24, R. 1872-1882). Thus the series of mergers which resulted in the combination of Deering Milliken and its 13 manufacturing corporations into Deering Milliken, Inc. had no effect whatever on the wages and working conditions at the mills (R.V. 1239-h) or on the distribution of functions between the various units of the organization (R. 1322, G.C. Ex. B-10). Surely these were little more than "paper arrangements" not reflecting "business realities." *Deena Artware, supra,* at 403. Roger Milliken's domination of virtually all aspects of the operations of the Deering Milliken complex are dealt with hereinafter (pp. 26-29, *infra*).

(2) Common Control and Integration of Operations

All sales of Milliken textiles were made through a single agent which was in a position to allocate orders and production between the mills. Wholly-owned service and research subsidiaries provided the affiliated corporations with technical research information relating to new products, processes and machinery. Most of the mills' purchases were made and inspected through a single purchasing department. There was

a central consulting engineering service, tax department and insurance department. And finally, the various corporations constituting the Deering Milliken complex regarded themselves as divisions of a single enterprise.

(a) *Coordination of Sales and Factoring Functions*

All of the Milliken corporations utilized Deering Milliken and Company as their exclusive sales agent and factor (R. 110, 111) and the latter furnished said services for none other than Deering Milliken affiliates (R.V. 1239c-1239d, R. 933-941, 1328, 1336, 1360). Inasmuch as several of the mills made or could readily convert to manufacture the same textile products made by their sister mills (R. 24, 514-520, 522, 933-939), the exclusive sales function necessarily entailed the allocation of orders and hence production among the mills (R. 592, 609-610, 948). Before commencing the manufacture of a new product mills were instructed to consult with other Deering Milliken mills where such textile products had previously been produced (R. 593-594, 603-608, 1152-1367). The mills also traded or lent each other equipment, notifying sister mills when they had surplus equipment to dispose of (R. 733, 740, 752, 1164-1165).

(b) *Deering Milliken Represented to Customers and the Public as a Single Enterprise*

Products of all the Deering Milliken mills were marked under the brand name "Milliken" (R. 126; 1231-1232) and the mills were described largely in terms of the types of textiles they produce to form "a well balanced group" (R. 1326-1341). The development of new textiles was ascribed to "Milliken ex-

perts" (G.C. Ex. B-13) and plans for new mills to "Milliken's own industrial engineers" (R. 27; 1334). A brochure prepared for distribution to Milliken employees in 1955 referred generically to "Milliken mills" and "the Milliken operation" (R. 27; 1324, 1341, 1479-1482, 1651-1654). When Deering Milliken customers were invited to visit a few of "our mills" the textiles on display at each mill visited included those manufactured exclusively by other Deering Milliken mills (R. 619, 933, 941-945, 948, 1328, 1336, 1370, 1375).

(c) *The Service and Research Corporations*

The Deering Milliken Service Corporation ("Service Corporation") and the Deering Milliken Research Corporation ("Research Corporation") were wholly-owned subsidiaries of the 17 manufacturing corporations and performed services exclusively for those corporations (G.C. Ex. F-1, R. 685, 1904).

The Service Corporation's prime responsibility was to rationalize assignments at the Deering Milliken mills. The industrial engineers on its staff audited the amount of work performed in comparison with "the standard" and sought compliance with "standard procedures" such as time study techniques, incentive pay systems and utilization of standard manuals (R. 714, 1463-1467). Studies were conducted on jobs or problems common to several mills (R. 712-714, 1456, 1465-1467) and the completed studies were then made available to the other mills (R. 707-710, 712, 1454, 1456).

The Research Corporation, like the Service Corporation, was regarded as a Deering Milliken department

(R. 1784) and primarily engaged in research and development on the testing and utilization of machinery (R. 837) where Roger Milliken so recommended (R. 406-409, 454-457, 1452-1454). Thus, the Research Corporation was involved in surveying and reporting on such diverse matters as: weaving parts inspection, proper installation and protection of new machinery; providing portable work benches for maintenance men; maintenance trucks; inspection of machine shops; machinery maintenance; specialized training of maintenance men and inter-mill visits; and scheduled preventive maintenance (R. 838-966; G.C. Exs. L-1, L-3 through L-10, L-12 through L-17, L-20, L-22, R. 1570-1608).

The implementation of recommendations from the Research Corporation necessarily affected work assignments, work loads and the job content of the mill worker and hence impinged upon the field of labor relations.

(d) *Coordination of Cost Reduction Efforts*

The Deering Milliken Cost Department established bench marks for each mill with respect to overhead and labor and periodically circulated memoranda to all of the cotton mill treasurers indicating "the overall position by mill" in meeting such "bench marks" (R. 792-796, 1520). Failure to come up to the mark called for an explanation from the delinquent mill (R. 797, 1521). Mills were sent comparative studies of pay policies with respect to holiday work (R. 798, 1522) and were advised upon "legally permissible" methods of minimizing overtime payments to salaried employees (R. 798-799, 1523-1526). The Cost Department assisted mills by distributing memoranda on the reduc-

tion of unemployment cost through planning work schedules and personnel transfers. Proposals for the amendment or reform in the administration of unemployment compensation laws were also referred to the mills (R. 143-144; 810-815, 1547-1558, G.C. Exs. J-17 and J-18).

(e) *Common Control of Purchasing*

The Deering Milliken Cotton Department was responsible for all cotton purchasing (R. 1044-1045, 1725-1727) and made laboratory tests on each bale of cotton to determine whether it met "high Milliken standards" (R. 1338). The Cotton Department allocated available cotton among the mills where supplies were insufficient (R. 159; 756, 1510) and made arrangements for the sale of each mill's waste, thereby preventing the sister mills from competing with each other for the waste market (R. 26; 757).

The Service Corporation's Purchasing Department functioned as exclusive purchasing agent for mill supplies (R. 284, 730-732) in order to secure the price advantages available through mass purchasing (G.C. Ex. G-7, R. 1489-1490, 1498-1500). The Purchasing Department kept the mills advised of advances in technology and improved equipment, and, where machinery was purchased for a number of mills, arranged the delivery schedule (R. 148; 1062-1064, 1484-1500, G.C. Ex. G-18). Finally, the Department maintained lists of surplus equipment owned by each of "our mills" within the "organization" and attempted to arrange for the transfer of surplus equipment (R. 736-737) before trying to sell it to a "competitor" (R. 733-737, 1479-1482, 1495-1496, 1505-1506, G.C. Ex. G-3).

(f) *The Deering Milliken Tax and Insurance Departments*

None of the mills had its own tax or insurance department (R. 630-633). The Deering Milliken Tax Department headed by Secretary and Assistant Treasurer Kable provided the mills with the various necessary tax services (R. 25-26; 160-161). Mr. Kable was elected an officer of all the Milliken corporations in order that he might be empowered to sign tax returns on their behalf (R. 632, 1322). All of such returns were checked by the same accounting firm and counsel (R. 25, 160; 630-632) and the mill treasurers invariably followed the Tax Department's "suggestions" (R. 569). The Tax Department, in addition to filing returns, prepared reports on government contracts and filed them with the Renegotiation Board on behalf of "the textile mills affiliated with Deering Milliken & Co., Inc." (R. 1397). Kable drafted the formal minutes of the meetings of stockholders and Boards of Directors (R. 25-26, 161; 637-639, 1379-1384) and also drafted resolutions to be submitted to the mills' Boards of Directors (R. 25; 639-1379-1383, 1385-1386).

The Deering Milliken Insurance Department maintained a full range of coverage for all affiliates, standardizing and centrally controlling the various types of insurance current at each of the mills (R. 656-660). The blanket fire insurance policy, for example, named the insured as "Deering Milliken and its affiliated corporations" (R. 60). The air insurance policy covered executives of Deering Milliken "and their affiliates and associates" (R. 674-675; G.C. Ex. E-8, R. 1426). As an inducement to better safety records, the Insurance Department yearly conducted a safety contest,

awarding a plaque to the mill with the lowest lost time frequency and cash prizes to employees submitting the best suggestions for accident prevention (R. 665-667; 1410-1411, G.C. Ex. E-3). The prize winning suggestions were subsequently sent to each of the mills by the Insurance Department (R. 671, 1419; G.C. Ex. E-6).

(g) *Coordination of Capital Expenditures*

The Service Corporation's Industrial Engineering Department was required to investigate and endorse recommendations from mill treasurers on capital expenditures (R. 741-742, 781-782, 1501).

A close control of such expenditures was maintained by Roger Milliken personally and he insisted upon detailed justification of all proposed capital acquisitions disapproving such proposals if in his judgment the return on the investment would be insufficient (R. 559-561, 741-744, 1066-1067, 1083-1085, 1355, G.C. Ex. N-66). That Roger Milliken regarded such investments as being made on behalf of a single enterprise is indicated by his reference to the millions of dollars that "we . . . as an organization . . . are investing in new machinery" (R. 1754).

(h) *Interchange of Supervisory Employees*

The shifting of a supervisory employee from one Deering Milliken operation to another was a "transfer" generally involving "a promotion from within" or a "demotion" (R. 140, 141, 156; 920-923, 1431-1434, 1644, 1665, G.C. Exs. F-8 and F-9). Approximately one-half the supervisors working at Darlington between 1951 and 1956, including Darlington's mill treas-

urer, Oeland, had been transferred from other Deering Milliken corporations (R. 1190-1191, 1201-1203). All salaried personnel at the mills were covered by the same retirement plan and such coverage was unaffected by transfers between the affiliated corporations (R. 131; 1096-1100, G.C. Ex. O-17).

Recruits for management jobs were told that the "top management" of the "organization" was Roger Milliken, and that opportunities for advancement would be available through "cross transfers mill to mill—staff to line, etc." (R. 146; 883, 923, 1642-1643).

(i) *Roger Milliken's Central Role*

Aside from approving capital expenditures (p. 25, *supra*), Roger Milliken exercised actual control over all the Deering Milliken operations to an unusual degree, often concerning himself with matters of relatively minor importance.

Roger Milliken continually sought to minimize taxes for all the Deering Milliken corporations and to this end developed a "uniform procedure" for obtaining maximum depreciation and secured a single set of treasury rulings which were distributed to all mills (R. 1054-1057, 1742-1743). As head of the management hierarchy Roger Milliken laid great stress on the quarterly meetings with the mill treasurers (R. 1012, 1709-1710). It was at these meetings that "many of the policies of the whole company" were developed (R. 1022, 1714) and Roger Milliken generally sent out copies of his follow up memoranda to officers of the various Deering Milliken corporations and not merely to those immediately concerned (R. 1678, 1700, 1719,

1735, G.C. Exs. N-2, N-10, N-12, N-48 and N-56). Such memoranda dealt with widely varying matters, including comparisons between the performance of the various mills on "weave room" relative humidity (R. 1717-1720); requests for organizational charts of "our different operations" (R. 1700-1701); and a proposal for a treasurers' meeting to discuss "how our organization can adopt the most efficient and inexpensive plans of production control" (R. 1008, 1703).

Always alert to prevent Deering Mililken's trade secrets from leaking out (R. 1049, 1738-1739, 1744-1747), Roger Milliken sought to accelerate the flow of such information between the mills in "our organization" (R. 1003-1008, 1022-1034, 1704-1720, G.C. Exs. L-18, O-13). In this connection Roger Milliken himself distributed memoranda to all the mills relating to various technical improvements and suggestions such as reducing "our consumption of water" (R. 1040, 1723); tests "to be sure we are not paying the starch companies for water" (R. 1728); tests comparing cloth furnished from greige goods produced by Deering Milliken mills with that made in mills of competitors (R. 1046, 1729); cloth testing (R. 1754); studies on package sizes in spinning (R. 1756); and devices to minimize thread tangles (R. 989-990, 1686).

(3) Common Control of Labor Relations

The dissenting judges hereinbelow found (R. 1908) "overwhelming evidence" to support the Board's holding "that Deering Milliken, primarily through the person of Roger Milliken, exercised control over the labor relations of all the corporations, including Darlington. Although the details of day-to-day person-

nel relations may have been, of necessity, conducted at the mills, it is manifest that the major decisions were exclusively in the hands of Roger Milliken. Under such circumstances it is clear that Deering-Milliken must assume responsibility for control of Darlington's labor relations" (R. 1908).

Thus Roger Milliken took a personal hand in the annual recruitment drive at colleges and universities for potential Darlington employees (R. 883; G.C. Ex. M-11, R. 1633-1637; G.C. Ex. M-12, R. 1638-1644; G.C. Ex. M-18, R. 1651-1654; G.C. Ex. 5, R. 1679). So, too, he sought to reduce or abolish the number of spare hands (substitute employees), initiating a survey in all the mills to determine the number of employees working less than 40 hours (R. 1088, 1089; G.C. Ex. N-46, R. 1740). Subsequently Roger Milliken was informed by Darlington's Oeland that the number of spare hands had been materially reduced and that lost time for sickness would decrease or discharges therefor would follow (R. 1773-1774, G.C. Ex. N-68). Again Oeland, in contemplation of a one-week vacation shutdown, and with a thought to further reduction of the number of spare hands, wrote to Milliken: "I would like to have your approval before we move in the matter" (R. 1086-1087; 1772; G.C. Ex. N-67). Indicative of Milliken's pervasive influence in personnel matters was the concluding sentence in Oeland's letter to the Insurance Department seeking to effect an increase in hospital benefits for Darlington employees: "We, of course, would clear the matter with Mr. Roger Milliken should we decide to explore it further" (G.C. Ex. E-2, R. 1409).

Roger Milliken required all mill treasurers to submit monthly reports on forms prescribed by him (R. 1004, 1070, 1106-1107). Several of these reports from Darlington are found as G.C. Ex. N-77, R. 1797-1811 and G.C. Exs. O-6 through O-11, R. 1824-1859. Frequently excerpts from particularly important reports were distributed to all the mills (*e.g.* the report from the Gainesville mill found at G.C. Ex. N-17, R. 1694-1699).

Finally the most dramatic proof of Roger Milliken's firm control over the labor relations of the various corporations constituting the Deering Milliken complex was his key role in the anti-union campaign at Darlington and the ultimate decision to shut down the plant (see pp. 5-7, *supra*).

We respectfully submit that upon the manifestly substantial evidence above set forth this Court should grant approval to the Board's finding that Darlington and the other Deering Milliken corporations together constituted a single "employer," within the meaning of the Act.

POINT III

The remedies of back pay and preferential hiring for Darlington workers at other Deering Milliken mills are not appropriate or adequate in that they fail to rectify the unfair labor practices committed in shutting down the Darlington mill.

Enforcement of the modest remedy ordered by the Board would demonstrably fall far short of dissipating the coercive impact of the Darlington shutdown. Indeed the Board itself acknowledges the unique character of the employer's unfair labor practices and concedes that the remedy afforded is less than adequate. Only by directing the re-establishment of a plant in Darlington, South Carolina can a fair semblance of the *status quo ante* be restored. Under the circumstances the Board's failure to fashion the one remedy that "will effectuate the policies of [the] Act" represented an arbitrary refusal to exercise its discretionary power under Section 10(c).

A. The Egregious Character and Widely Coercive Effect of the Unfair Labor Practices

Section 8(a)(1) of the Act makes it an unfair labor practice for an employer to "interfere with, restrain, or coerce employees in the exercise of the rights [to form, join and assist labor organizations] guaranteed by Section 7." Manifestly, there can be no more effective restraint on the worker's right to organize and no harsher reprisal for the exercise of that right than discriminatorily terminating his employment.

Such termination action falls within the express prohibition of Section 8(a)(3), and the Board properly found the retaliatory Darlington shutdown to constitute a particularly egregious breach of this section.

In the run-of-the-mill discriminatory discharge case the offending employer can be expected to proclaim his innocence of anti-union animus and to assert that the discharges were prompted by legitimate business considerations. The Board is then presented with the difficult task of determining the employer's true motivation. What distinguishes the Darlington plant shutdown and fully warrants invoking the ultimate in Board remedies is not so much the blatancy of the employer's coercive discriminatory actions, for such lack of subtlety might well be attributable to ignorance, ineptness or poor legal advice. The truly singular feature here present is that Deering Milliken, guided by able counsel from the outset (R. 421, 1775-1776) and carefully calculating the consequences, deliberately eschewed making any effort to cover its tracks. We submit that this course was chosen in order that the stark, unequivocal facts of Darlington would stand out in bold relief as an object lesson—a monument to the recalcitrant employer's ability to frustrate and nullify the right to organize guaranteed workers under Section 7 of the Act. As Judge Bell perceptively noted in his dissent hereinbelow,

> "The Darlington Mill was but a small unit in a vast industrial empire employing more than 19,000 persons owned and controlled directly or indirectly by the Milliken family. Its closure was intended to be and was a grim deterrent to the thousands of employees in the affiliated plants who might entertain similar notions of unionization." (R. 1909)

It is manifest that the ruthless destruction visited upon the Darlington community was intended (1) to instill fear in the remaining unorganized Deering Milliken workers, (2) to reinforce the normal antipathy to unionization widely prevalent in southern mill town communities and to prevent the relaxation of such antagonisms in an increasingly industrialized and awakening South, and (3) to provide a formula by which backward multiplant southern employers might thwart or nullify efforts at unionization. The record overwhelmingly supports our hypothesis that Deering Milliken purposefully set out to make the destruction of the Darlington community a symbol—a "Mohawk Valley" or, more aptly, a "Lidice."

In this context can it be seriously argued that the remedy proposed by the Board would succeed in dissipating "the deeply coercive effects upon other employees who may desire self-organization but have been discouraged therefrom by the threat to them implicit in the discrimination"? *Ford Motor Company*, 31 NLRB 995, 1099-1100.

In practical terms, just what lessons would the enforcement of the Board's back pay and preferential hiring remedy herein teach? Certainly it would offer no message of reassurance to the small mill town against future discriminatory plant shutdowns or in any wise diminish the hysterical fear of economic obliteration that the Darlington story has widely engendered. It would be of but slight solace to the afflicted community that some of the discharged workers from the shutdown mill might ultimately be granted preferential hiring rights at remote plants in other towns.

The preferential hiring and back pay remedy would be of almost equally small comfort to the southern mill worker contemplating his discriminatory discharge should an organizing drive result in a union victory. Understandably his joy at the prospect of being accorded preferential hiring rights by an implacably hostile and vindictive employer at other mills in strange and distant surroundings would be tempered by the concomitant necessity of abandoning the community in which he was raised and the ties of family, friends, tradition and property.

A cursory examination of the only available sampling of Darlington workers, *viz,* those produced as witnesses by the General Counsel, readily reveals the unusual stability of the Darlington work force. Thus, of the 34 witnesses indicating their length of employment, approximately half had worked at the Darlington mill 15 years or more and more than two-thirds had worked there in excess of 10 years. They include such as Nora King, who began working for Darlington in 1907 when she was seven years old (R. 379), and John Plummer, who had given the company 38 years of faithful service (R. 305). These are not workers whose pattern is to flit from town to town or from job to job.*

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* The Census Bureau's figures on mobility are based upon movement *into* rather than out of the area. They nevertheless demonstrate statistically the pattern of stability that characterizes our semi-rural population. Whereas the United States national average for the percentage of the population of all counties which had migrated in from different counties during the period from 1955 to 1960 was 17.4%, the mobility figure for Darlington County was only 8.9%. (*U.S. Bureau of the Census, County & City Data Book, 1962 (A Statistical Abstract Supplement)*, U.S. Govt. Printing Office, Washington, D.C., 1962).

Finally, what lesson would Deering Milliken and other giant southern employers similarly situated be taught by the enforcement of the remedy proposed by the Board? Certainly the meager liability for back pay entailed constitutes a small price for the terrible anti-union weapon that the Darlington shutdown purchased. Indeed it is not unreasonable to surmise that Deering Milliken's ultimate back pay liability has been more than offset by the wage savings flowing from the resultant delay in unionization. The patent inadequacy of the Board remedy from the standpoints of the Darlington workers and the mill town community, moreover, insure the future success of the Darlington formula. In short, the Board's remedy would permit Deering Milliken to retain the fruits of its deliberate violations of the Act, and the deterrent effect of the order would be virtually nil.

B. The Board Possessed Ample Power to Restore the *Status Quo Ante* at Darlington

The Board's discretionary authority in devising remedies to purge unfair labor practices under Section 10(c) of the Act is necessarily broad for, as the Court noted in *Phelps Dodge Corp.* v. *NLRB*, 318 U.S. 177, 194,

> ". . . in the nature of things, Congress could not catalogue all the devices and stratagems for circumventing the policies of the Act—Nor could it define the whole gamut of remedies to effectuate these policies in an infinite variety of specific situations. Congress met these difficulties by leaving the adaptation of means to end to the empiric process of administration."

It is thus for the Board and not the courts to determine how the effects of unfair labor practices can best be expunged. *NLRB* v. *Falk Corp.*, 308 U.S. 453; *NLRB* v. *Link Belt Co.*, 311 U.S. 584; *NLRB* v. *Greyhound Pacific Stages, Inc.*, 303 U.S. 272. However, the Board's discretionary power is not unlimited, for the remedy devised must be "appropriate." *NLRB* v. *Bradford Dyeing Assn.*, 310 U.S. 318.* The Board may not mechanically apply an established remedy without regard to special "circumstances which make its application to a particular situation oppressive and therefore not calculated to effectuate a policy of the Act." *NLRB* v. *Seven Up Bottling Co.*, 344 U.S. 344, 349. The remedy hence must be "adapted to the situation which calls for redress" *NLRB* v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333, 348, and where the Board's remedial order is clearly inconsistent with or fails to effectuate the "policies" of the Act, this Court has not hesitated to remand with appropriate instructions. *Southern Steamship Co.* v. *NLRB*, 316 U.S. 31; *NLRB* v. *District 50 UMW*, 355 U.S. 453.

Of course we do not quarrel with the Board's remedial order herein so far as it goes, *viz.* to require restitution for lost wages to Darlington workers from the date of discharge, the offer of employment at other

* See: *NLRB* v. *Cosmopolitan Studios, Inc.*, 291 F.2d 110 (2nd Cir.), wherein the court remanded to the Board with the direction to consider an appropriate modification of its order, *inter alia*, to permit the union to regain the status which it had lost as a result of the employer's refusal to bargain; *Local 833 UAW* v. *NLRB*, 300 F.2d 699 (D.C. Cir.), wherein the remand directed the Board to consider whether strikers denied reinstatement because of "misconduct" had been discharged for "cause" under Section 10(c) of the Act. Cf. *NLRB* v. *Television & Radio Artists*, 285 F.2d 902 (6th Cir.); *NLRB* v. *Local 751 Carpenters*, 285 F.2d 633 (9th Cir.).

Deering Milliken mills, and the establishment of a preferential hiring list for those for whom employment is not immediately available. Each of these remedial formulae is practical and has been judicially approved (*R.C. Mahon Company,* 118 NLRB 1537, enf. denied on other grounds, 269 F.2d 44 (6th Cir.); *Bonnie Lass Knitting Mills, Inc.,* 126 NLRB 1396; *Jays Foods, Inc.,* 129 NLRB 690, enf. denied on other grounds, 292 F.2d 317 (7th Cir.); *Hugh Major Truck Service,* 129 NLRB 322, enf. in pertinent part, 296 F.2d 466 (7th Cir.); *Sidele Fashions, Inc.,* 133 NLRB 547, enf. 305 F.2d 825 (3rd Cir.)), especially where an employer operates related enterprises or discontinues part of an operation and moves the discontinued operation elsewhere. See *NLRB* v. *Lewis,* 246 F.2d 996 (9th Cir.). In such circumstances, the Board has not hesitated to require, as here, reimbursement for necessary moving expenses. *NLRB* v. *Wollick and Schwalm Co.,* 198 F.2d 477, 482 (3rd Cir.); *NLRB* v. *Missouri Transit Co.,* 250 F.2d 261, 263-5 (8th Cir.).

However, neither back pay nor reinstatement at other Deering Milliken mills, nor preferential hiring with moving expenses, nor posting of notices and advertising in newspapers, nor bargaining with the Union on any of these matters, can adequately remedy the situation in Darlington, South Carolina. The Board itself implicitly conceded as much in its brief (p. 168) to the court below by acknowledging that "an order requiring the establishment of another mill in Darlington would be the most effective remedy to restore the status quo." Yet this surely is that case where the equities cry out for as farreaching an order as the Board may statutorily impose.

Nor would the granting of this "most effective remedy" be unprecedented. For the Board has repeatedly directed the resumption of discontinued portions of an over-all operation. Thus, in *R.C. Mahon Company,* 118 NLRB 1537, 1544, enf. denied on other grounds, 292 F.2d 44 (6th Cir.), where the plant security functions were contracted out, the Board, in accordance with its "usual policy in such cases," ordered that the Respondent "reopen the plant-protection department, . . ." Again, in *NLRB* v. *Brown-Dunkin Co.,* 287 F.2d 17, 19 (10th Cir.), enfg. 125 NLRB 1379, the Board ordered an employer, who subcontracted maintenance work after a union won an election, to re-establish its own maintenance operations and offer reinstatement to the employees discriminated against. The remedy of ordering the resumption of operations is hence not novel, much less revolutionary, and is, in the premises, perfectly fitting.* *Royal Products Company,* 77 NLRB 1217; *American Air Filter Co.,* 127 NLRB 116; *Preston Feed Corp.,* 309 F.2d 346, 351 (4th Cir.). Indeed no remedy of lesser scope would fulfill the Board's statutory mandate to fashion remedies "as will effectuate the policies of [the] Act."

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* See also: *Houston Chronicle Publishing Company,* 101 NLRB 1208, requiring the company to re-establish its "old system." and cases cited therein; *NLRB* v. *Bank of America,* 130 F.2d 624 (9th Cir.), enfg. 26 NLRB 198, directing reinstatement of a department which it had converted to contractor status for the purpose of undermining the union; *Butler Bros.,* 41 NLRB 843, enf. 134 F.2d 981 (7th Cir.) *cert. den.* 320 U.S. 789, ordering an employer to take "whatever steps may be necessary, including modification or cancellation" of a contract with a different company under which employees were transferred.

C. The Board's Misguided Attempt to Strike a Balance Between the "Conflicting Interests" of the Guilty Employer and the Innocent Victims of the Discriminatory Plant Shutdown

The equities here are obviously all on one side and yet the employer, with unparalleled gall, has made a hardship pitch that the Board, perversely we think, finds appealing. Thus the Board, invoking equitable principles, argues that in fashioning a remedy it is necessary to accommodate the employer's right to discontinue its Darlington operation with the conflicting right of the Darlington workers to organize; to weigh the hardship suffered by the Darlington workers against the burden upon the employer of resuming its Darlington operation. We submit that this compassion for the employer's plight is misplaced. Indeed it calls to mind that old saw about the child charged with patricide seeking to evoke pity as an orphan. However, assuming that some accommodation of conflicting interests is appropriate in this case, we believe that striking a fair balance would in any event dictate nothing less than the re-establishment of a plant in Darlington, South Carolina.

The usual remedy afforded by the Board where violations of Section 8(a)(3) of the Act have been found is reinstatement of the discriminatorily terminated workers with compensatory back pay. This remedy manifestly best effectuates the policies of the Act by depriving the employer of the fruits of his wrongdoing and putting the victims of such wrongdoing in the same position that they would have been in had the Act not been violated. See *Franks Bros.* v. *NLRB*,

321 U.S. 702, 705. Where, as here, it is found that an employer shuts down a portion of his business in order to deny to his workers the right to bargain through the union they have selected, the Board ordinarily directs the employer to re-establish the abandoned operation as a precondition to reinstating the discharged workers with back pay. *NLRB* v. *Preston Feed Corp.*, 309 F.2d 346, 351-352 (4th Cir.); Cf. *Fibreboard Paper Products Corp.* v. *NLRB*, No. 14 this Term.

The Board, although invested with broad discretion in fashioning remedies, must take "fair account, in a civilized legal system, of every socially desirable factor in the final judgment." *Phelps Dodge Corp.* v. *NLRB*, 313 U.S. 177, 198. Obviously there are some discriminatory discharge cases where, despite the atrocious character and wide impact of the violation found, an order directing the resumption of the discontinued portion of the business might be completely impracticable or unconscionably burdensome upon the employer; where it is simply not feasible to put Humpty Dumpty together again. *NLRB* v. *Savoy Laundry, Inc.*, 327 F.2d 370 (2d Cir.).* However, we respectfully submit that a fair analysis of the factors peculiar to Darlington fully establishes the

* In *Savoy Laundry* the court refused enforcement of so much of a Board order as required the employer to "take reasonable and business-like steps" to resume its wholesale shirt laundering division for the reasons that: (1) "Savoy is and was a relatively small, family-owned and operated business"; (2) "Savoy has not engaged in this phase of the laundry business for almost three years"; and (3) "since its patronage and good will have undoubtedly been lost in the interim, we feel that it would be unduly harsh to require the resumption of the division now." (327 F.2d at 373.)

arbitrary nature of the Board's decision to depart from its usual reinstatement with back pay remedy.

If Darlington had been a separate business entity or had even constituted a major portion of the Deering Milliken organization—if the product line had been discontinued and a sales organization disbanded—there would have been some rational basis for the Board's limited remedy. However, using the number of production employees as an index, Darlington represented no more than 3% of the Deering Milliken operation. Moreover, all of Darlington's unfilled orders and product lines were assumed by its sister mills and there is no evidence that Deering Milliken sales were even reduced, much less disrupted, by the Darlington shutdown.

If the textile industry had been in a long-term process of contraction with few new plant openings, and high capital cost, the Board's failure to direct the reestablishment of a plant at Darlington might have been understandable. However, the fact is that the major southern textile chains have been expanding rather than contracting during the past ten years. Thus, while closing three plants, including Darlington, Deering Milliken has acquired eleven new plants, ten through purchase and one by new construction. (See fn. 17, AFL-CIO brief *amicus curiae*.) Moreover, the capital investment per production worker in the textile industry is substantially lower ($10,050) than the average for all manufacturing industry ($18,227) (*Economic Almanac,* p. 273, National Industrial Conference Board, 1964).

If reassembling a competent supervisory force and training skilled workers presented an insuperable bar-

rier, or if there were some overriding objective reason unrelated to the Union's election victory, rendering Darlington an unsuitable plant site, we might acquiesce gracefully in the Board's pathetically inadequate remedy. However, an experienced managerial staff can be readily reassembled from the Deering Milliken supervisory pool (see pp. 25-26, *supra*) and the Darlington workers have the necessary inventory of skills, thereby minimizing retraining costs.

Inasmuch as there are no supervening considerations warranting a departure from the one and only Board remedy that could fully restore the *status quo ante* at Darlington, what was it that impelled the Board arbitrarily to abdicate its obvious responsibility in this case? Unfortunately neither the Board's Decision nor the succession of superb Board briefs provides any clues to this critical question. However, we surmise that, despite the Darlington shutdown and precipitous liquidation, an order directing the re-establishment of the plant would have been forthcoming if this matter had been decided by the Board within a reasonably short period following the shutdown.

Suppose that in January 1957, a month following the Darlington plant liquidation, Deering Milliken had indicated its willingness to agree to a full formal settlement of the pending Board complaint. The accrued back pay liability then being minimal, can anyone believe that the Board would have given serious consideration to a settlement on the limited basis encompassed by its Decision and Order herein; that the Board would have found anything less than an agreement to resume operations at Darlington sufficient to expunge the coercive effect of the blatant un-

fair labor practices committed by this employer? We are confident that at that juncture the Board would have dismissed out of hand any proposed settlement order not entailing the reopening of a new plant at Darlington as contrary to "its usual policy in such cases." *R. C. Mahon Company, supra.*

Aside from the continued accrual of Deering Milliken's back pay liability, there is not a scintilla of evidence that the employer has been prejudiced by the passage of time *per se.* Thus no proof was offered of any substantial change in Deering Milliken's position following the shutdown. The Board's fatuous suggestion that the substantial *amount* of back pay liability imposed on this employer somehow makes up for the failure to grant the "usual" and "most effective remedy" of plant re-establishment simply makes no sense. What meager back pay the Darlington workers ultimately receive will merely compensate them for loss of earnings. It will not restore them to their mill jobs at Darlington from which they were discriminatorily discharged, nor provide them with the union protection they fought for, nor award them damages for the suffering they have so long endured.

If the Board's limited order is permitted to stand, the moral of Darlington will be clear to all: "If the anti-union employer is big enough and rich enough to absorb some back pay liability he can brazenly flout the National Labor Relations Act with impunity, totally negate his employees' selection of a bargaining agent by discriminatorily discharging them, and forever coerce his remaining employees by the simple device of permanently shutting down, with much fanfare, a small portion of his over-all operations." This

is what "Darlington" now means to the southern textile workers, the mill town communities, and recalcitrant mill owners alike.

POINT IV

The Board erred in refusing to hold Roger Milliken individually liable for the Deering Milliken unfair labor practices.

The unfair labor practice charge by which these proceedings were initiated named Darlington, Deering Milliken and "Roger Milliken, President" as "the employer." (R. 1241 G.C. Ex. 1C) The Board's amended complaint prepared and issued by the General Counsel dropped the descriptive word "President" and named Roger Milliken as an individual respondent. (R. 2, 87-92) However, invoking the six-month limitation period under Section 10(b) of the Act, the Board ruled that the charge had not been directed against Roger Milliken in his individual capacity and hence was not sufficient to toll the statute. Accordingly the Board dismissed the complaint as against Roger Milliken individually (R. 29-30).

A. The Record Establishes Roger Milliken's Intimate Involvement in and Supports His Liability for the Unfair Labor Practices Committed at Darlington

Section 2(2) of the Act defines the term "employer" to include "any person acting as an agent of an employer," and the Board has frequently held individual corporate officers personally liable for employer un-

fair labor practices. *Industrial Fabricating, Inc.*, 119 NLRB 162; *Southland Manufacturing Company*, 94 NLRB 813, 829; *Cookville Shirt Company*, 79 NLRB 667; *Edward Taubman*, 77 NLRB 846; *Republican Publishing Company*, 73 NLRB 1085, enf. 174 F.2d 474 (1st Cir.); *Schieber Millinery Company*, 26 NLRB 937, 963; *Mount Hope Finishing Company*, 106 NLRB 480, rev. for reasons not here relevant 211 F.2d 365 (4th Cir.). In *Mount Hope, supra*, the Board, upholding a complaint against the company's President and Treasurer individually, stated:

> "As officers, and directors of these two companies, the two Millikens were acting as their agents at the time of the unfair labor practices set forth above. They were therefore 'employers' for the remedial purposes of the Act. . . ."
>
> ". . . the individual Respondents have dominated both corporations and have been responsible for their labor relations. They are thus the real parties in interest who must be held responsible under any appropriate order which the Board might enter. It would defeat the purposes of the Act to permit these individuals to take refuge behind the corporate entities of the two corporations." (106 NLRB at 498-499)

We have hereinbefore adverted in some detail to Roger Milliken's unique position in controlling the operations and labor relations of the corporations constituting the Deering Milliken complex. A measure of Roger Milliken's central role in the Darlington situation is the fact that Judge Bell, in his cogent dissent, found it necessary in reviewing the evidence supporting the Board's single employer finding to mention

Roger Milliken's name no less than twenty-three times. Thus Judge Bell held, *inter alia,*

(a) that "Roger Milliken retained ultimate control over the whole Milliken complex and acted as its chief executive officer without delineating his various capacities," (R. 1908-1909)

(b) that "Roger Milliken's ultimate and uncontradicted control of major policies affecting labor relations was illustrated by his decision with approval of his family to close the Darlington plant," (R. 1908) and

(c) that the Milliken family stock ownership permitted "Roger Milliken to exercise dominion of all phases of business and labor relations at each mill and over each and every corporate entity in the entire complex." (R. 1906)

The Trial Examiner, while holding the General Counsel's case against Roger Milliken procedurally defective, declared (R. 88):

> ". . . were the General Counsel's position here sufficient as a matter of law, the facts previously found and those here noted would warrant an Intermediate Report and the conclusion that Roger Milliken is liable individually even without decision on such issues as the extent of his control of Darlington stock."

Thus, no one having occasion to examine the record herein has suggested that evidence is lacking of Roger Milliken's personal unlawful involvement in the employer unfair labor practices found. No one has suggested that the complaint against Roger Milliken individually should have been dismissed on the merits.

However, in addressing itself to the procedural aspects of the charge and complaint against Roger Milliken, the Board initially erred by taking an over-technical approach and then proceeded to compound this error by a ruling that, even from a purely technical standpoint, is utterly indefensible.

B. The Unfair Labor Practice Charge Against "Roger Milliken, President" Furnished a Sufficient Basis for Holding Roger Milliken Personally Liable

The Board, in justification of this holding, noted that the charge "speaks in the singular of the employer and thus does not suggest that Roger Milliken, individually, was regarded as an employer separate and apart from his position as President" (R. 29-30). Moreover, the Board found, largely on the basis of the Union's offer of proof at the first hearing, that the Union had intended to include Roger Milliken as a connecting link between the various corporations rather than as an individual (R. 29-30).

As to the first justification cited, the Union consistently maintained throughout the hearing and thereafter that Darlington, Deering Milliken and Roger Milliken together constitute one employer. Thus the use in the charge of the singular form "employer" no more indicated that the Union did not hold Roger Milliken personally liable than that it did not intend to hold Deering Milliken liable. The offer of proof was concerned with the "single employer issue" and manifestly the allegations most relevant to that issue were those pertaining to Roger Milliken as a "connecting link." However, even in that offer

of proof Roger Milliken's individual involvement in the company's campaign was repeatedly noted (R. 301, 302).

Even viewing the unfair labor practice charge herein as a formal pleading, the word "President" following "Roger Milliken" was merely *descriptio personae* and hence not properly construed by the Board as involving him only in his official capacity. *Clark* v. *Porcelain Mfg. Co.*, 8 S.C. 22; *Bynum* v. *Prudential Life Ins. Co.*, 77 F. Supp. 56 (E.D.S.C.). However, an unfair labor practice charge cannot properly "be measured by the standards applicable to a pleading in a private law suit." Its purpose is "merely to set in motion the machinery of an inquiry" and there can be no justification for "confining such inquiry to the precise particularization of a charge." *NLRB* v. *Fant Milling Co.*, 360 U.S. 301, 307-308. Thus even if the Union's charge had not properly cited Roger Milliken individually as a respondent, this would not have been a fatal defect inasmuch as Roger Milliken was certainly on notice that the charge was directed against him. *Deluxe Motor Stages*, 93 NLRB 1425, enf. 196 F.2d 409 (6th Cir.).

We submit that holding Roger Milliken personally liable for the flagrant unfair labor practices for which he was primarily responsible would not only be fully warranted by the record herein and entirely consistent with the Act as construed by the Board, but moreover would provide substantial deterrent value to the otherwise pathetically inadequate Board remedy herein.

CONCLUSION

For the reasons hereinabove stated and in the brief *amicus curiae* filed by the AFL-CIO, it is submitted that the decision below should be reversed and the Board's decision and order appropriately modified.

Respectfully submitted,

IRVING ABRAMSON
EVERETT E. LEWIS
DONALD GRODY
LEONARD GREENWALD
19 West 44th Street
New York 36, New York
Attorneys for Petitioner Textile Workers Union of America, AFL-CIO

October 1964

APPENDIX A

National Labor Relations Act

Sec. 2 * * *

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, * * *

* * * *

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, * * *

* * * *

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of em-

ployment to encourage or discourage membership in any labor organization: * * *

* * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * *

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

* * * *

Sec. 10. * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its finding of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * * *

(f) * * * [The court] shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree en-

forcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * * *

Labor Management Relations Act

Sec. 1. * * *

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

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Nos. 37 and 41

Supreme Court of the United States

OCTOBER TERM, 1964

TEXTILE WORKERS UNION OF AMERICA, *Petitioner*

v.

DARLINGTON MANUFACTURING COMPANY; DEERING MILLIKEN, INC.; DEERING MILLIKEN & COMPANY, INC.; AND NATIONAL LABOR RELATIONS BOARD.

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

DARLINGTON MANUFACTURING COMPANY; DEERING MILLIKEN, INC.; DEERING MILLIKEN & COMPANY; TEXTILE WORKERS OF AMERICA, AFL-CIO.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE AMERICAN TEXTILE MANUFACTURERS INSTITUTE AS AMICUS CURIAE

ROWLAND F. KIRKS
General Counsel

CHARLES G. CAFFREY
Attorney
American Textile Manufacturers Institute
1120 Connecticut Avenue, N.W.
Washington, D.C. 20006

INDEX

	Page
I. Introduction	1
II. Interest of American Textile Manufacturers Institute	2
III. Statement	2
1. The status of the Darlington cases	2
2. The problems of the textile industry	4
3. The functioning of the selling house	13
The Questions Presented	18
IV. Argument	18
A. A corporate employer has the right to discontinue a business operation, liquidate and go out of business for whatever reason	18
B. Congress did not intend that a corporate employer should not have the right to consider the advent of a labor union as a realistic economic factor in reaching business decisions concerning the operation or discontinuation of a business	20
C. Congress did not intend that a selling house for a group of textile manufacturers and all manufacturers in the same selling group should be treated as a multiple-plant with common liability for the unfair labor practices of each of the manufacturers in the group	24
CHARTS:	
New Profit on Net Sales	6, 7
Cotton System Spindles	8
U. S. Imports of Textile Manufacturers	9

INDEX OF CITATIONS

CASES: Page

Jays Foods, Inc. v. *National Labor Relations Board*, 292 F. 2d 317 (7th Cir. 1961) 22

Mount Hope Finishing Co. v. *National Labor Relations Board*, 211 F. 2d 365 (4th Cir. 1954) 22, 24

National Labor Relations Board v. *Adkins Transfer Co.*, 226 F. 2d 324 (6th Cir. 1955) 22

National Labor Relations Board v. *Lassing*, 284 F. 2d 781, certiorari denied, 366 U.S. 909 (1961) 22, 23

National Labor Relations Board v. *Neiderman*, 334 F. 2d 601 (2d Cir. 1964) 24

National Labor Relations Board v. *New England Web, Inc.*, 309 F. 2d 696 (1st Cir. 1962) 22, 23, 24

National Labor Relations Board v. *Rapid Bindery, Inc.*, 293 F. 2d 170 (2d Cir. 1961) 22, 23

National Labor Relations Board v. *R. C. Mahon Co.*, 269 F. 2d 44 (6th Cir. 1959) 23

STATUTE:

National Labor Relations Act, as amended

Section 8(a)(1) 3
Section 8(a)(5) 3

MISCELLANEOUS:

Note, *Economic Effect of Textile Mill Closings*, U. S. Dept. of Commerce 1963 10

Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce, U. S. Senate, 87th Congres, 2d Session, February 6-7, 1961, pp. 301-305 11

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE AMERICAN TEXTILE MANUFACTURERS INSTITUTE AS AMICUS CURIAE

I.

INTRODUCTION

This brief *amicus curiae* is submitted by the American Textile Manufacturers Institute with the consent of the parties, pursuant to Rule 42(2) of the Supreme Court Rules.

II.

INTEREST OF AMERICAN TEXTILE MANUFACTURERS INSTITUTE

The American Textile Manufacturers Institute (hereinafter the "Institute") is the central trade association for manufacturers of textiles made from cotton, man-made fiber, and silk. The Institute represents approximately 85 per cent of the basic textile industry in the United States.

The Institute usually avoids involvement in the private litigation of its individual members. However, in a case of vital importance to the industry as a whole, the outcome of which will have a lasting effect upon the future of the textile industry generally, the Institute has the responsibility of representing the interests of all its members. The Institute feels strongly this is such a case. It presents issues of far-reaching importance not only to the operation of American enterprise generally but, most particularly, to the American textile industry and this *amicus curiae* brief is filed for the purpose of presenting to the Court the views of this industry.

III.

STATEMENT

1. The status of the Darlington cases.

These cases arose out of events occurring in the latter part of 1956. After extensive hearings over five years and three Trial Examiner's intermediate reports (two "supplementary" to the first), the National Labor Relations Board (hereinafter the "Board") ruled that Darlington Manufacturing Company (hereinafter "Darlington") violated the National Labor Relations Act (hereinafter the "Act"). The violation

consisted of permanently and totally closing down Darlington's one and only textile mill and, thereafter, in accordance with South Carolina law, disposing of its assets, liquidating its operations, and dissolving its corporate existence.

The Board also ruled that Deering Milliken, Inc. (hereinafter "Deering Milliken"), Darlington's New York selling house and, a substantial stockholder[1] in Darlington, was legally responsible for the unfair labor practices of Darlington although not itself in violation of the Act. The Board directed its remedy toward all of Darlington, Deering Milliken, Inc. and other "affiliated corporations" which also used Deering Milliken as a selling house.

The Fourth Circuit Court of Appeals refused to enforce the Board's order. The Court ruled "that the decision to close the plant was not an unfair labor practice" (R. 1898). It similarly declined to enforce the Board's findings that Darlington had violated Sections 8(a)(1) and (5) because "remedies for these offenses are not now available as Darlington is no longer alive".

This brief is in two parts:

(a) A factual statement of general conditions and practices in the textile industry before and after dissolution of Darlington which seem relevant to consideration of the issues before this Court; and

(b) A brief legal discussion of the application of the law to these conditions and practices in the *Darlington* case.

---

[1] Deering Milliken acquired its stock by virtue of a bankruptcy proceeding in 1937.

2. The problems of the textile industry.

The Institute recently published its annual review of the cotton textile industry entitled "Ten Years of Cotton Textiles" (1954-1964). The following excerpt is an accurate technical description of the economic conditions of this industry starting two years before the Darlington liquidation (November *1956*) and coming up to date:

> "'Profitless prosperity' described the markets at the start of the decade. Years of liberal production had followed the 1949 depression, but in 1954 this was petering out with meagre earnings, constant and relentless pressure upon the price structure, and new issues which were to afflict the industry over the coming years.
>
> "Negotiations of Japan's accession to the General Agreement on Tariffs and Trade was begun in 1954. It culminated in a September 11, 1955 slash of 25-to-50 per cent in most United States textile duties. Imports boomed and the long pattern of their expansion to embrace not only Japan but more than three score nations was set, leading finally to the international textile arrangements effective in October, 1961.
>
> "Also in 1954 federally-held raw cotton stocks were rising dangerously and the first pressures were placed on government to bridge with an export subsidy the widening gap between its high domestic support price and the lower world market. For more than eight years, beginning in January, 1956, and extending into 1964 domestic mills were to bear the cross of two-price cotton. Supported with a high government "loan" to growers, the fiber was available to home mills only at the loan rate or better prices, as the law excluded them from significant access to the world market. To foreign spinners government made cotton

available at the world price, picking up the tab for 6¢, 8¢, or 8½¢ a pound, or on a bid basis.

"Subsidized by some 25 per cent of the value of their raw cotton, refurbished with equipment largely new, armed with wage costs a fraction of those in America, and with tariff walls lowered to stepping-stone level, the invitation was out for the foreign spinner, weaver, and garment manufacturer to glut American markets with cut-price goods. This was to cost United States cotton interests 3,503,700 bales of business with domestic mills in the decade, 1,279,600 of this in the years 1962 and 1963 with the international arrangements then in effect. It was to cost domestic mills literally billions of yards of domestic and export sales. It was to cost the nation untold amounts in lost productive facilities, jobs, and taxes."

The following charts from the Institute's publication "Textile Hi Lights"[2] illustrate graphically the conditions described in the above text. On each chart is noted the point, *October 1956,* when the stockholders of Darlington voted to liquidate.

[2] Winter 1964.

CHART A

MILL INVENTORIES vs WEAVERS' MARGINS AND PROFITS

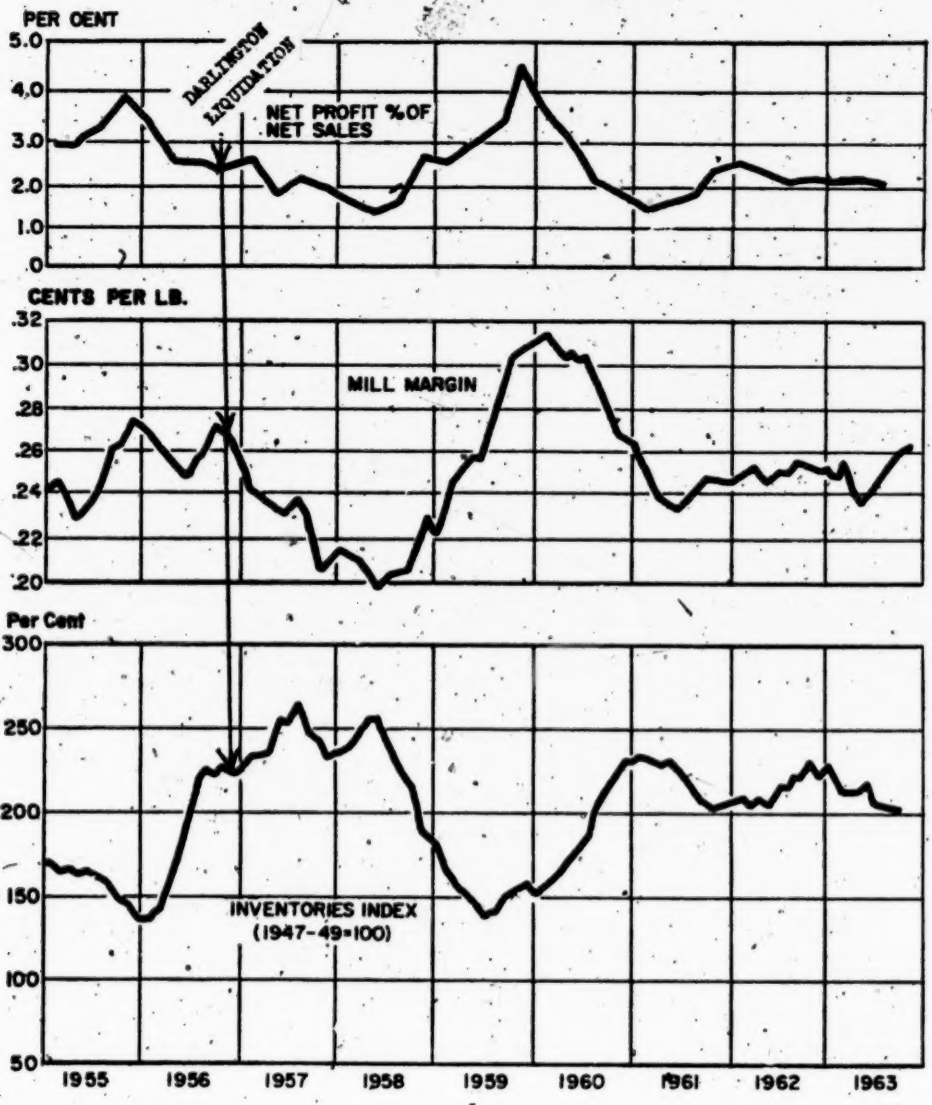


CHART A

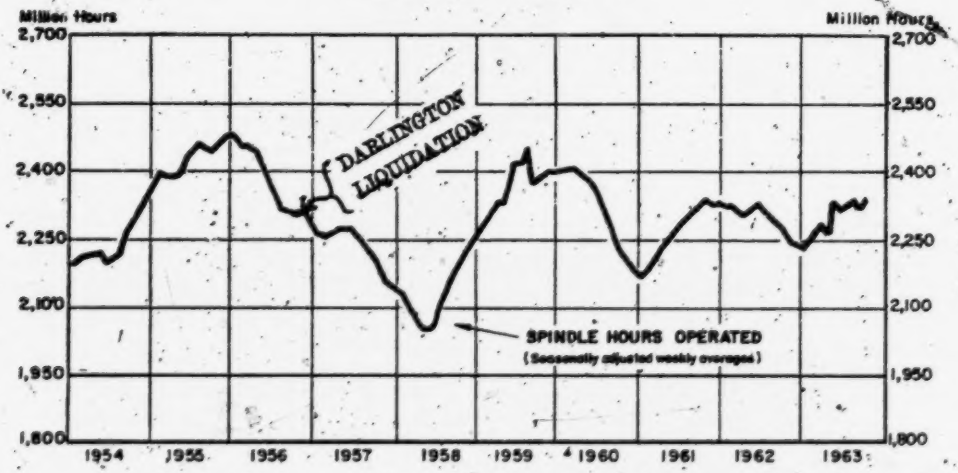
NET PROFIT ON NET SALES[1]

(per cent)

Year \ Quarter	1st	2nd	3rd	4th	Average
1955	2.9	2.9	3.3	3.9	3.3
1956	3.1	2.5	2.5	2.4	2.6
1957	2.6	1.8	2.1	2.0	2.1
1958	1.6	1.4	1.6	2.7	1.8
1959	2.6	3.1	3.4	4.6	3.4
1960	3.6	3.0	2.1	1.9	2.7
1961	1.5	1.6	1.9	2.4	1.9
1962	2.5	2.2	2.1	2.3	2.3
1963	2.2	2.2	2.1		
Average 1955-62	2.5	2.3	2.4	2.8	

[1] Average of Standard and Poor's six Textile Weavers (Burlington, Cone, Dan River, Lowenstein, Reeves and Stevens, each given equal weight). Data formerly based on partial estimate now based on actual quarterly figures.

CHART B
SPINDLE ACTIVITY
ON COTTON SYSTEM



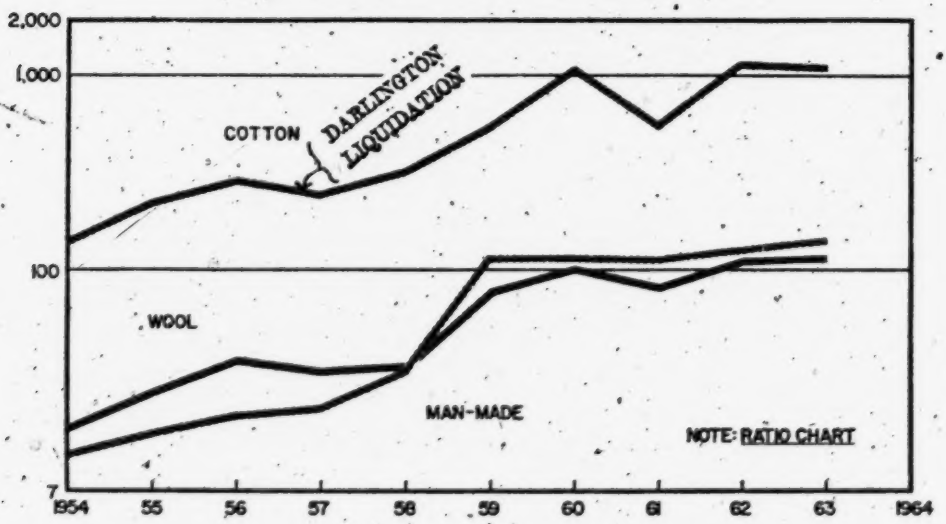
Crop Year (August 1-July 31) or Month	Cotton System Spindles	
	Spindles in Place (at end of period) (in thousands)	Spindles Active
1950-51	23,195	22,140
1951-52	23,205	21,298
1952-53	22,903	21,423
1953-54	22,694	20,626
1954-55	22,273	20,716
1955-56	21,903	20,557
1956-57	21,195	19,760
1957-58	20,845	19,241
1958-59	20,300	19,166
1959-60	19,956	19,228
1960-61	19,603	18,986
1961-62	19,489	18,761

SOURCE: Bureau of the Census, U.S. Department of Commerce.

CHART C

U. S. IMPORTS OF TEXTILE MANUFACTURES

(MILLION EQUIVALENT—SQUARE YARDS)



U.S. IMPORTS OF TEXTILE MANUFACTURES

(millions of equivalent square yards)

Year	Cotton	Man-made	Wool	Total
1954	202	19	32	253
1955	362	28	46	436
1956	450	34	60	544
1957	398	38	55	491
1958	492	52	57	601
1959	720	134	91	945
1960	1,054	132	111	1,297
1961	722	121	93	936
1962	1,166	168	145	1,479
1963	1,100	203	158	1,461

Source: U.S. Department of Commerce unit import data to equivalent square yards.

What these charts tell is clear. When the Darlington stockholders voted to liquidate, the chief factors of rising costs and foreign competition had brought the textile industry as a whole perilously near the disaster stage.

Until legislative changes of 1964 such cost increases and intense foreign competition have kept the textile industry generally in a steady decline since World War II. Compared to other industries profits have been wholly inadequate both from the standpoint of percentage of sales and return on investment.[3] The number of spindles in place has declined from about 23 million in 1954 to 19 million in 1964.[4] The production of square yards of cotton textiles by the domestic industry was less in 1963 than it was in 1954 even though the domestic population has increased over 26,000,000.[5]

Employment in the industry has correspondingly decreased. The industry employs 440,000 fewer workers today than in 1946.[6] One-third of these people have been terminated because of closings like Darlington of uneconomic mills. The other two-thirds have been displaced because of automation and related technological developments, much of which has been accelerated by the profit squeeze on the industry.

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[3] Chart A illustrates the low profit yield during these years. The years 1956 through 1958 (just before and after Darlington liquidated) were particularly depressed.

[4] This is due partially to liquidation and partially to modernization. See Chart B.

[5] 1954 census 163 million; 1963 census 189 million.

[6] Economic Effect of Textile Mill Closings, U. S. Dept. of Commerce 1963, p. 1.

Flexibility, even to the point of going out of business, has always therefore been necessary in the textile industry. For varying reasons, primarily economic, although partially through obsolescence (both reasons existed in Darlington's case) the post war years have seen an alarming rate of mill closings in this industry. More than 670 textile mills like Darlington were closed between 1946 and 1960. There were over a hundred closings in the year 1955 alone (the year before Darlington closed). In the South during this 1946 to 1960 period, there were over 200 closings.[7]

Technological advance, improved methods and production flexibility to meet fast-changing fashion markets are indispensable to maintain the textile industry. In some places, these meet with employee and community resistance as the cottage weavers destroyed the first spinning jennies. The profit ratio of the industry does not attract new investment capital except where cooperation of employees can be expected. Therefore, there is a vital link in any modernization or expansion program to the attitude of employees. If there will be resistance, then modernization is likely to fail and the new capital would be better invested elsewhere. Management dare not ignore or neglect these realistic and practical considerations.

The industry is both the oldest in this country and also one of the first to be established in any underdeveloped country. The industry in the United States

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[7] *Problems of the Domestic Textile Industry*. Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce, United States Senate, 87th Congress, 2d Session, February 6-7, 1961, pp. 301-305.

until recently had a disproportionate amount of old and inefficient plants. For instance, the Darlington mill involved in this case was built in 1883.

On the other hand, with enthusiastic United States foreign aid, practically every rehabilitated or underdeveloped country has since World War II acquired and now operates modern textile mills. Even the invention of still more efficient machinery has been developing in these countries.

In addition to liberal foreign aid from World War II on, the textile industry has been suffering from two other U. S. Government policies. The first is a tariff policy favoring freer trade with larger imports of the new textile exports of the underdeveloped countries. The second is a domestic agricultural policy of supporting the price of cotton which has given overseas mills in the cost of their U. S. cotton a 25 per cent price advantage over U. S. mills.

The charts show that a major contributing factor to the economic troubles of the textile industry has been the phenomenal rise in textile imports in the last 10 years. At the time of Darlington's liquidation this was a pressing problem.

Applying those facts to the decision of the Darlington shareholders to liquidate, the charts show that in 1954 approximately 202 million equivalent square yards of cotton textiles were imported in the United States. By 1956, when Darlington finally liquidated, imports had reached 450 million equivalent square yards, an increase of 100 per cent in just two years. (By 1963, the figure would reach 1 billion 1 hundred million square yards.)

Unfortunately, the reverse was true of our export markets. Cotton cloth exports went down from 605

million square yards in 1954 to 506 million square yards in 1956. (The 1963 figure would be down to 369 million.) This foreign competition, with its cost advantages because of substandard wages and lower world market prices on raw materials, is largely responsible for the long years of difficulty for the domestic textile industry. As the figures above indicate, its effects first began to intensify in the period immediately preceding Darlington's liquidation.

The inroads of imports from abroad have already taken such a permanent segment of the market for low grade goods that the domestic industry has in substance been required to find markets more and more in higher grade goods which are fundamentally components of a high risk fashion business or swiftly changing technological development of new and mixed fabrics. The fashion business and technological change have in turn put new demands upon production management to be able to adapt to sudden turns in markets and to depend more and more for selective marketing upon specialized selling houses in New York.

The textile industry is, therefore, of all American industries, the industry in which management freedom for immediate management decision—for "turning on a dime"—is the most indispensable and in which labor flexibility and costs are disproportionately determinative over other costs in profit or loss.

3. The function of the selling house.

The textile fashion industry is so highly competitive on the domestic scene as well as abroad that sales and sales promotion are of the utmost importance.

As the earliest industry of the United States, the textile industry is made up of hundreds of small and large companies with over 7,000 individual establishments located in 43 states. The number of small companies is probably higher than that which exists in any major manufacturing industry. Yet the bulk of the textile market is localized in the New York City area. Thus, through the years, it has been a practice in the industry for mills or companies to contract with a New York "selling house" for their merchandising including the discounting of their accounts receivable. These selling houses frequently contract with numerous mill customers for exclusive merchandising of the particular products of their particular mills under the selling agent's brand name. The purpose of the arrangement is to accomplish more effective and efficient merchandising by utilizing the existing facilities of the selling house and its expert knowledge of the fluctuating fashion market to avoid the expense of a separate sales operation for each mill or each company.

The textile industry from earliest times has consisted of great numbers of widely scattered plants with varied products. Early mills sought distribution by consigning goods to storekeepers in various New England commercial centers who acted as selling agents. For mills then pioneering the technique of mass production the inadequacies of this service, in which no certainty of volume markets or certainty of payment of accounts accrued to the mill, were quickly apparent.

The next big step in distribution was use of wholesale commission merchants in the big Philadelphia, Balti-

more, and New York centers which with the opening of Western trade were providing surer outlets for substantial amounts of factory made goods. This was an improvement. But the relationship suffered as recurring manufacturing surpluses left these dealers with only periodic public auctions as a means of sale, a method of dubious value for the manufacturers.

The mill selling house, which devoted its full time to the needs of its textile mill clients, developed during the War of 1812 as the truly effective answer to sales problems of the industry, and has continued so with few modifications to the present. The selling houses pioneered mass marketing skills suited to the skills of mass factory production in the mills. They brought stability to existing mills and provided the base for further industrial expansion. Their position and value in textiles have been recognized as almost unique in American industry and remain so today.

Selling houses today are centered in New York City, which for a century has been the central marketplace for woven textiles in which mill representation is regarded as vital to successful operation. The prime task of these houses is of course sale of the products of mills they represent, through New York, through branches of the selling house in other American centers, frequently today through foreign branches or export divisions. Thus, the products of these thousands of plants at distant points are effectively, efficiently, and competitively distributed to thousands of customers throughout this nation and the world.[7a]

No less important than the actual sale, however, is the likewise historic task of advising the mills. The

[7a] During World War II, the textile industry supplied 10,000 different items to the armed services.

textile industry makes countless constructions and fabrics and countless finishes for a vast list of end uses. Fashion affects apparel and household lines. New technical developments affect industrial fabrics. There is a constantly growing list of new fibers with new properties and values. No period prior to the last two decades has been more explosive in technical development and complexity of the market mix of fiber, fabric, and finish. And it is at the market level, in a ferment of ideas between customers and selling houses, that a great part of this development takes place.

It is a duty of the selling house, therefore, to keep the mill posted on all matters affecting its products and market opportunities. Knowing the range of the mill's equipment, it must advise the fabrics or constructions which it feels will be most wanted in the future. It may advise on whether they should be sold in the loom state, or to contract for finishing and sell in the finished state. It may counsel on shifts from one fiber to another, or to blends. This calls too for such advice as the seller can give on the probabilities of supply, demand, and price in the general market. Thus, the sales organizations serve as professional business advisers and market counselors to the mills they represent.

The selling house from the earliest times has assumed financial responsibility for marketing, and in nearly all cases today guarantees the credit of the customer back to the mill. Historically, selling houses have been bankers to mills, and through their location in New York City may today assist mill clients in financial matters. Other services also are provided: collections handled, records kept, claims investigated,

adjustments made, and technical, market research, promotion and advertising provided as needed.

It is only through selling houses that the nation's independent mills are able today on a commission basis to obtain a well rounded merchandising service.

The arrangement of these independents with the selling house is usually stated by contract. The house in nearly all cases is given the exclusive sales agency for the mill. Commission rates are stated, a low rate on gray goods, slightly higher on finished goods, the highest rates usually on ready-for-the-consumer products. The mill retains complete control over its prices, products, pattern of distribution, and hours of operation. The selling house may advise on any or all of such matters. Usually no sale to a customer is binding until accepted by the mill.

Some independents have sold through their present selling house or its antecedents for as many as 60 years. There are many of these independent mills. No one in the absence of a thorough survey knows the exact number. They are widely scattered. They cannot effectively operate without a selling house. Most of them are small plants. Those known to us range mainly between $3 and $6 million dollars of sales with some up to about $10 million.

It is not at all unusual in the textile field for groups of mills selling through a single selling house to be referred to as "this group" or "that group," *e.g.*, the "Deering Milliken group". Many of the so-called groups have overlap of stockholdings. This sales practice of the industry is in no way inconsistent with the various participating mills being independent as to their labor practices; labor relations are not affected by such arrangements.

The selling house complex is the merchandising system of the textile industry. It is unique in many ways. It has been hammered out in the market place of experience. Upon it, with all its attendant services and facilities, a great industry and its employment potential depends.

THE QUESTIONS PRESENTED

Against this background there are three basic questions before the Court which are of fundamental importance to this particular industry.

1. Did Congress intend in the Act that a corporate employer should not have the right to go out of business for whatever reason?
2. Did Congress intend in the Act that a corporate employer should not have the right to consider the advent of a labor union as a realistic economic factor in reaching a business decision concerning the operation or discontinuation of a business?
3. Did Congress intend in the Act that a selling house for a group of textile manufacturers and all manufacturers in the same selling group incur liability for the unfair labor practices of one of the manufacturers in the group?

IV.

ARGUMENT

A. A corporate employer has the right to discontinue a business operation, liquidate and go out of business for whatever reason.[8]

The Board has held in this case that an employer commits a violation of the Act by closing its only plant,

[8] Since the particular situation of the textile industry is peculiarly relevant to the second and third questions presented, we shall treat summarily the argument on this first point.

selling the assets at public auction, liquidating the corporation and distributing the proceeds to the stockholders. The Board has so ruled in this case on the ground that an employer whose employees have designated a union as their representative does not—like other employers—have the right to discontinue business if a contributing factor is the advent of a union. Significantly, this case contains the additional proposition that this rule applies even though admittedly the employer is losing money and the economic future of the company is in serious jeopardy.

It is a shock to this industry that it could seriously be considered that a law of the United States could be construed now—for the first time since its enactment nearly 30 years ago—to mean that the stockholders of a company are not free for any reason to discontinue a business venture and withdraw their capital investment. The essence of the competitive system is the right of an entrepreneur to venture his capital in a business or profession of his choosing and endeavor to succeed to whatever extent his abilities permit him. But the necessary correlative is that he be able to withdraw from that pursuit, with or without failure, if he wants to. The denial of that right in this case by the Board concerns not only the textile industry but our entire industrial and investing system.

Certainly it could not constitutionally be suggested that a law of the United States could be construed to require an individual employee to remain in the employment of an employer against his wishes.

Certainly an individual or partnership employer could no more be compelled to the involuntary servitude of providing employment for employees than the

individual employee could be compelled to work for an employer, individual or corporate. Is it possible to conceive that the Congress intended a different rule in this respect for the corporate form of doing business that is the backbone of the business life of the nation?

The ruling of the Board in these cases was properly set aside by the Fourth Circuit Court of Appeals upon the basis that correlatively with an individual employee, an employer even if a corporate person has an absolute prerogative, to go out of business.

B. Congress did not intend that a corporate employer should not have the right to consider the advent of a labor union as a realistic economic factor in reaching business decisions concerning the operation or discontinuation of a business.

While their position is not entirely clear, the Board and the Union would apparently have this Court reverse the ruling of the Fourth Circuit Court of Appeals on the ground that a corporation's right to go out of business is not effective where the employees' choice to bring in a union is one of numerous considerations of an employer in his overall decision to quit business.

It is impossible that a realistic Congress could have intended this. All legislative history is to the contrary.

A company or its management cannot function without the right to consider the advent of a union as a realistic economic factor in arriving at business decisions over the conduct or discontinuation of a business operation. The Union contends that when they realistically and honestly take the projection of a

union's demands into their economic calculations, investors may be compelled by statute under the Constitution to continue an unprofitable business even though the business judgment of management on *all* relevant factors would dictate liquidation. The far-reaching effect of such a ruling by this Court would cast a shadow upon *all* matters of business judgment and management affairs. Such a challenge could not be considered to confine itself to the decision to liquidate —to quit. Management and investors would have to project it to extend to the decision of the manner in which their business could go on.

Shall we expand this year? Shall we put in new machinery or remodel the old? Shall we go into this venture or that? Shall we manufacture print cloth or tent material? Shall we produce one product or 100? Shall we turn out goods for inventory or only on definite orders? Do we employ 10 people or 1,000? Do we operate five machines or 500? If we are overproducing, do we cut back production? If a commodity is unprofitable, do we continue to produce it because it gives us a complete line or do we discontinue it?

All of these, and many others, which constantly arise, are questions which require the application of business judgment. Traditionally and properly, they call for decisions from those charged with the management of the business. The success or failure of the business—and the employment potential—depends upon the skill with which such decisions are made. Any such business judgment if it is to be accurate must take into account *all* realistic factors involved.

The Board's decision casts a shadow of indefinite length upon an employer's ability to make any de-

cisions. If the Board can control the right to quit altogether, the shadow of things to come is that the Board can certainly control the way—or the right—to go on.

Various courts of appeals have fully appreciated the perversion of Congressional intent in the Board's refusal—in its eagerness to assist union organization—to allow businessmen honestly to consider unionization as one of many economic factors in a decision to quit. All courts that have considered the question have reaffirmed the employer's right to consider and act upon the economic ramifications of the entrance of a union into his plant. See *NLRB* v. *Lassing*, 284 F. 2d 781, 783 (8th Cir. 1960), *cert. denied*, 366 U.S. 909 (1961); *Jay Foods, Inc.* v. *NLRB*, 292 F. 2d 317, 320 (7th Cir. 1961); *Mount Hope Finishing Co.* v. *NLRB*, 211 F. 2d 365, 372 (4th Cir. 1954); *cf. NLRB* v. *Rapid Bindery, Inc.*, 293 F. 2d 170, 175 (2d Cir. 1961).

The most recent rebuke delivered to the Board in its effort to divorce its promotion of union organization from economic realities was *NLRB* v. *New England Web, Inc.*, 309 F. 2d 696 (1st Cir. 1962). There, a textile employer already beset with considerable and persistent economic problems was faced with the unionization of his only plant. The First Circuit, reversing the Board, said (*Id.* at 701) that unionization "was assuredly a new factor to be considered by the New England Web management in determining a future course of action." Therefore, the court concluded that it was not improper, as the Board had suggested, for the company to evaluate the effect of "the advent of the union . . . (on) its already precarious cost picture" (*Ibid.*).

Courts have held it does not make any difference if the final decision to terminate operations is not made until after the advent of a union becomes a certainty (*e.g.*, after an election). Employers are not penalized for not making a decision definite until the problem becomes definite. *NLRB* v. *Rapid Bindery, Inc., supra,* at pages 173-74; *NLRB* v. *New England Web, Inc., supra.* It does not matter if the form of the decision is also not determined until after unionization becomes a fact. Employers are not penalized because they did not have the particular action that was taken under consideration prior to the advent of the union. See *New England Web, supra,* at 701.

Nor would it matter that in this particular case the exact demands the Union would have made on Darlington were not known when the decision to shut the mill was made. Here, despite the Examiner's ruling that the company had no right to anticipate union demands, the record is clear that this union had, during its campaign, promised greater pay, improved working conditions and, particularly, resistance to any and all management attempts to change work assignments along with the introduction of new equipment. (See R. 64.) It is true that an employer may not view campaign promises as inflexible positions that cannot and will not be affected by collective bargaining. But the law is clear that an employer is not acting arbitrarily or unreasonably when he alters his method of operations in the face of a reasonably anticipated increase in costs. *NLRB* v. *Lassing, supra,* at 783. The law does not require that an employer take no action until those costs actually materialize. See *New England Web, Inc., supra,* at 702; *NLRB* v. *Adkins Transfer Co.,* 226 F. 2d 324, 328 (6th Cir. 1955); *NLRB* v. *R. C. Mahon Co.,* 269 F. 2d 44, 47 (6th Cir. 1959).

The textile industry in particular cannot help but understand the Board's interpretation of the Act to mean that an American businessman if he realistically takes the incidence of a union into business calculations must stay in business until the last drop of economic life or the last expectation of profit vanishes. This argument has been as unsuccessful as it is unrealistic. It has been rejected in all other cases that have involved the charge that the owner of a single plant violated the Act by completely and permanently shutting it down. *Mount Hope Finishing Co.* v. *NLRB, supra; NLRB* v. *New England Web, Inc., supra; NLRB* v. *Neiderman,* 334 F. 2d 601, 604 (2d Cir. 1964). It should be rejected in this case.

C. Congress did not intend that a selling house for a group of textile manufacturers and all manufacturers in the same selling group should be treated as a multiple-plant employer with common liability for the unfair labor practices of each of the manufacturers in the group.

In 1956 when Darlington liquidated, Deering Milliken & Co. was a selling house with no manufacturing facilities of its own. If, as the union argues in this case, such a selling house relationship creates a multiple-plant "single employer" with a common responsibility upon all customers of the house for the labor violations of any member of the group, the merchandising mechanism of the textile industry is in jeopardy of endless litigation over common liability and responsibility in other directions.

The relationships and the factors relied upon by the majority Board decision and the dissenting Court opinion to find "single employer" liability are relationships commonplace in selling house arrangements in the textile industry. These relationships, conduct,

services, and interchange of functions have been a part of this selling agent system for more than 100 years. A colloquialism like "Deering Milliken group" by which mills are known in the trade should not determine or alter the legal status of their members.

The system has always been considered to maintain the independence of mills such as Darlington. It has never been considered to involve the labor relations of any mill. It has never been considered to constitute its members a multiple-plant operation.

But if the corporate veil is to be pierced to assume that producing mills and their selling house are a multiple-plant operation for Labor Act purposes a new precedent is created to constitute them a single operation with common liability and responsibility for other purposes.

This new precedent for the enormously important law of vicarious liability will have been based on Board finding that a multiple-plant single employer status exists in the Deering Milliken selling group. That finding will have been made by a 3-2 vote of an administrative agency (after a post-election membership change) overruling a "clear" finding to the contrary by its Trial Examiner and without any review of the administrative finding by an appellate court.

If, as the Board decision in this case holds, liability may now be assessed across corporate lines on the basis of relationships such as those of a selling house group, then an important part of the settled marketing system of the textile industry may have been rendered legally too risky to be viable. Any such result bringing into question the traditional relationship and services which have been hammered out in highly competi-

tive markets would be highly disruptive and injurious to the industry. That unhappy effect would be particularly untimely for this textile industry as it is recovering from other innovations in government policy.

We find nothing in the legislative history of the Act or in the decided cases to date to justify any statutory interpretation that Congress intended any such result.

Respectfully submitted,

ROWLAND F. KIRKS
General Counsel

CHARLES G. CAFFREY
Attorney
American Textile Manufacturers Institute
1120 Connecticut Ave., N. W.
Washington, D. C. 20006

TABLE OF CONTENTS

	Page
INTRODUCTION	1
SUMMARY OF THE CASE	2
STATEMENT OF POSITION	5
ARGUMENT	10
A. The Act Does Not Compel Any Employer to Continue in Business Against His Will	11
1. The Board doctrine would deny management any realistic appraisal of all relevant economic factors	11
2. Nothing in the legislative history or language of the Act supports the Board's approach	15
3. The decision of the court below is supported by the weight of judicial authority	20
4. The Board's rationale is in conflict with the authorities	24
5. The basic right to discontinue a business completely is not impaired by the fact that an employer controls other plants or enterprises which may continue to function	29
B. The Imposition of Responsibility for Unfair Labor Practices of One Corporation Upon Other Corporations Having Widely Different Sets of Stockholders Violates Fundamental Principles of Corporation Law	32
1. The Board's theory flies in the face of the pronouncements of reviewing courts	32
2. The Board's decision disregards the immunities of minority stockholders	41
CONCLUSION	43

INDEX OF AUTHORITIES

Cases:	Page
Associated Press v. N.L.R.B., 301 U.S. 103	16
Atlanta Motel, Inc. v. U. S., No. 515, October Term, 1964	24
Atlas Underwear Co. v. N.L.R.B., 116 F. 2d 1020 (C.A. 6)	20
Bachman Machine Co. v. N.L.R.B., 266 F. 2d 599 (C.A. 8)	40
Bank of America, 26 NLRB 198	17
Berkey v. Third Avenue Railway Co., 244 N.Y. 84, 155 N.E. 58	33
Fibreboard Paper Products Corp. v. N.L.R.B., No. 14, October Term, 1964	8
Fisser v. International Bank, 282 F. 2d 231 (C.A. 2)	35, 36
Griffin v. Prince Edward County, 377 U.S. 218	23
Isaac Scheiber, et al., 26 NLRB 937	17
Jacob & Ruth Klotz, 13 NLRB 746	17
Jays Foods, Inc. v. N.L.R.B., 292 F. 2d 317 (C.A. 7)	20
Katzenbach v. McClung, No. 543, 33 LW 3313	24
Kuehne Mfg. Co., 7 NLRB 304	17
Mount Hope Finishing Co. v. N.L.R.B., 211 F. 2d 365 (C.A. 4)	27, 29, 34, 40
N.L.R.B. v. Adkins Transfer Company, 226 F. 2d 324 (C.A. 6)	26
N.L.R.B. v. Aluminum Tubular Corp., 299 F. 2d 595 (C.A. 2)	40
N.L.R.B. v. Brown & Root, Inc., 203 F. 2d 139 (C.A. 8)	40
N.L.R.B. v. Caroline Mills, Inc., 167 F. 2d 212 (C.A. 5)	20
N.L.R.B. v. Deena Artware, Inc., 361 U.S 398	33, 42
N.L.R.B. v. Insurance Agents Union, 361 U.S. 477	14
N.L.R.B. v. Jamestown Sterling, 211 F. 2d 725 (C.A. 2)	29
N.L.R.B. v. Lassing, 284 F. 2d 781 (C.A. 6)	15, 26, 29, 31
N.L.R.B. v. New England Web, Inc., 309 F. 2d 696 (C.A. 1)	20, 24, 29, 31
N.L.R.B. v. New Madrid Mfg. Co., 215 F. 2d 908 (C.A. 8)	20, 21
N.L.R.B. v. Norma Mining Corporation, 206 F. 2d 38 (C.A. 4)	40
N.L.R.B. v. R. C. Mahon Co., 269 F. 2d 44 (C.A. 6)	20, 26, 31
N.L.R.B. v. Reed & Prince Mfg. Co., 118 F. 2d 874 (C.A. 1), cert. denied, 313 U.S. 595	14

Page

N.L.R.B. v. St. Clair Lime Co., 315 F. 2d 224 (C.A. 10) 14
N.L.R.B. v. Truck Drivers Local Union, 353 U.S. 87 .. 16
N.L.R.B. v. Tupelo Garment Company, 122 F. 2d 603 (C.A. 5) 20, 40
Newton Chevrolet, 37 NLRB 334 17
Press Company v. N.L.R.B., 118 F. 2d 937 (C.A. D.C.) 40
Republic Steel Corp., 9 NLRB 219 17
Roy & Sons v. N.L.R.B., 251 F. 2d 771 (C.A. 1) 40
Securities and Exchange Comm. v. Chenery Corp., 318 U.S. 80 6
Steven v. Roscoe Turner Aeronautical Corporation, 324 F. 2d 157 (C.A. 7) 36, 39
Taylor v. Standard Gas and Electric Co., 96 F. 2d 693 (C.A. 7), rev'd on other grounds, 306 U.S. 307 ... 33
Waterman Steamship Corporation, 309 U.S. 206 18
Williams Motor Co., 31 NLRB 715 17
Wisconsin Employment Relations Bd. v. Algoma Plywood & Veneer Co., 336 U.S. 301 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 37

TEXTILE WORKERS UNION OF AMERICA, *Petitioner*

v.

DARLINGTON MANUFACTURING COMPANY, ET AL.

No. 41

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

DARLINGTON MANUFACTURING COMPANY, ET AL.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES AS AMICUS CURIAE

INTRODUCTION

The Chamber of Commerce submits this brief as *amicus curiae* because of the concern of its membership in this matter. Permission to file a brief was granted pursuant to consent of the parties under Rule 42(2).

The Chamber of Commerce of the United States is a federation, consisting of a membership of over 3,900 national, local and state chambers of commerce and trade associations, with an underlying membership of approximately 1,700,000 business firms and a direct membership in excess of 19,400 business firms. Many members are engaged in interstate commerce or in activities which affect interstate commerce and, being subject to the National Labor Relations Act will be vitally affected by the outcome of this litigation. From the standpoint of American managers and investors this is a "watershed case." If the novel doctrines of the National Labor Relations Board now being pressed upon this Court are upheld, they will inevitably direct currents destined to undermine the efforts of the managers of American industry to meet their challenges.

SUMMARY OF THE CASE

This case arose out of a decision of the National Labor Relations Board holding that Darlington Manufacturing Company had violated Sections 8(a)(1), 8(a)(3) and 8(a)(5) of the National Labor Relations Act. In its Order the Board directed that employees whose employment had been terminated by reason of the closing of the Darlington Manufacturing Company be given back pay from the date of such closing until they obtained substantially equivalent employment elsewhere. In its remedy the Board also held that Deering Milliken, the selling agent of the company, and a group of other textile mills loosely described by the Board as "affiliated corporations" or the Deering Milliken "complex" constituted, with Darlington, a "single employer". Accordingly, its Order, supplemented by a provision for employment or preferential listing for employment of Darlington personnel in

these other mills, also runs against this asserted "employer."

The controversy which ultimately reached the Board stemmed from the action of Darlington, a South Carolina Corporation, in liquidating its only plant, a factory manufacturing certain grades of printed cloth, in the fall of 1956. In the spring of that year the Textile Workers Union began an organizing drive among the production and maintenance workers of Darlington, culminating in a Board election on September 6, 1956, in which 256 voted for the Union and 248 against it (R. 52, id., at 270).

In its campaign the Union promised higher wages and opposed what it termed the "stretch out". On September 12, Roger Milliken, president of Darlington, convened a meeting of the Board of Directors and recommended that the board present a resolution to the stockholders that the plant be liquidated (R. 5, 52). Shortly before the election the chief executive officer had reported an operating loss of $40,000. This happened on the eve of the severe textile recession of 1956-8. On October 17, the stockholders voted to shut down operations and liquidate the plant, which was thereupon advertised for sale at public auction. No new orders were accepted and as the work ran out in the different departments the employees who manned those departments were dismissed. All operations were terminated on November 24. At the subsequent auction sale in December the plant and equipment were sold to various bidders.[1] The trial examiner found that there

[1] Textile Workers Union, petitioner in No. 37, asserts erroneously that the plant (Br., p. 6) was "auctioned off piecemeal despite the upon earlier plea that an effort be made to secure a purchaser for the entire, equipped plant". This statement is in direct conflict with the finding that the auctioneer acting for the company first asked for bids on the entire plant and its equipment (R. 53).

was no claim that the sale was not to *bona fide* purchasers for value.

After taking of testimony on the complaint and consideration of evidence bearing on the motivation of the company, the trial examiner concluded (R. 65, *id.*, p. 275) that, while there were several economic factors that might have entered into the decision to close,[2] the fact that Milliken testified that the results of the election and the promises and statements of the Union during the pre-election campaign were matters that entered into his recommendation, was sufficient for the examiner to believe that the mill would not have been closed "at that time" but for the Union's election victory (R. 65, *id.*, p. 275).

In its decision, issued five and a half years after the trial examiner's initial report was published, the Board affirmed his finding that Darlington would not have been closed at the time except for the Union's victory in the election, and his legal conclusion that the incidental termination of the employment of the working force constituted a Section 8(a)(3) violation as a discrimination against union membership. Like the trial examiner, the Board did not deny that other economic factors might have entered into the consideration to liquidate, but added (R. 9):

> Moreover, even assuming, as the Respondent contends, that the six genuine economic factors as well as the employees' union activities were responsible for the closing of the mill, Darlington's ac-

[2] The trial examiner said (R. 65):

> The [economic] factors cited were sufficient to support a decision to terminate operations; certainly it cannot be said that such a decision could not reasonably, or even unreasonably but credibly, be based on those factors.

tion was no less unlawful. A plant shutdown resulting in the discharge of employees that is partly due to employees' union activities constitutes an unfair labor practice.

The remedy formulated by the Board was one of almost unprecedented severity. It not only overruled the trial examiner's findings concerning the lack of responsibility on the part of Deering Milliken—despite two supplemental hearings on this point pursuant to Board remands—but also overturned his recommendation against back pay and directed reinstatement of the employees at the plants of other corporations.

The Court of Appeals for the Fourth Circuit denied enforcement, holding that if a business is terminated completely "the power to close, even if spurred by unionization, is not precluded by the Act" and assuming, *arguendo*, that "Darlington was a division of Milliken", the court went on to hold "that a part, like the whole of a business, may be abolished when the extinction is consummated in circumstances like the present".

STATEMENT OF POSITION

As the great majority of the members of the Chamber of Commerce are business firms or trade associations composed of companies engaged in activities which affect interstate commerce, the Chamber is deeply concerned with the disposition of two issues which this Court has been called upon to decide:

The first and most important question is whether an employer who discontinues operations and goes completely out of business violates Section 8(a)(3) of the Act by terminating the employment of his working force if the discontinuance of business is motivated in

part by reluctance to recognize and bargain with a union which has recently won an election.

The second is whether the Board may issue a remedial order imposing upon other corporations, with public stockholders, liability for the unfair labor practices of a defendant corporation with different shareholders and different employees.

Until this case was decided it had always been taken for granted that there was nothing in the National Labor Relations Act that compelled an employer to remain in business if, confronted with the obligations imposed upon him by the Act as a condition for remaining in a business, he concluded such conditions were too onerous, and simply shut up shop.

The first question is the one actually posed by the Board decision. The issue therefore is considerably broader and more ominous in its overtones to the business community than is indicated by the briefs of the Board and the unions.[3]

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[3] Despite the admonition of this Court, *Securities & Exchange Commission* v. *Chenery Corp.*, 318 U.S. 80 at 94, 95, that the test before a reviewing court of the validity of an order of an administrative agency depends upon whether its findings are supported by the record, petitioners in both cases here defend the Board order on grounds respecting which the Board made no finding. The unions describe the challenged shutdown as if solely undertaken "to discourage union activities and to avoid having to bargain with a union" (Pet. Br. in No. 37, p. 14; AFL-CIO *amicus* Br., p. 2), and the Government speaks (Pet. Br. in No. 41) of the closing as "a dramatic warning to the employees at other mills of the disastrous consequences of unionization" (*id.*, pp. 29-31). But the Board made no finding with respect to certain testimony cited in petitioners' briefs for the purpose of showing that the decision to close was vindictive and intended to be an object lesson to employees in the other "Milliken Mills". Hence, the argument made in behalf of the Board in No. 41 is based upon a wholly hypothetical situation, *viz.*, that the Darlington plant was closed and the em-

In its opinion, the Board conceded that economic factors entered into the consideration of management to close the plant, buf held that this was not a valid defense in view of the admission that the results of the union election were a factor in the decision to terminate operations (R. 9, 10). That this was in fact the main ground of its holding is demonstrated by the Board's own official explanation, *viz.*, that its 8(a)(3) finding was predicated upon the shutdown being "motivated *in part* by objection to the employees' union activities"[4] (Emphasis supplied). Thus the decision of the Board, set aside by the court below, stands for the broad proposition that an employer in a marginal plant or a plant which is incurring heavy losses may be subjected to the severest kind of liability for back pay if its ultimate decision to withdraw the plant from business is actuated *even in part* by well grounded apprehension of increased costs or less efficient production as a result of union organization of the employees.

If this decision is permitted to stand, it would have dire effect upon employers who do business as individ-

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ployees thrown out of work as a deliberate method of discouraging union membership or activity by the employees in the other Milliken mills. Certainly this was not what the Board found. It did not advert to any possible impact of the Darlington events upon any other plants in its discussion of the asserted violations of Section 8a(1), (3) and (5), and developed the "single employer" theory only in its formulation of "The Remedy". Moreover, the employees to whom relief was extended because they were the supposed victims of "restraint," "coercion," or "discouragement" of union membership consisted only of Darlington personnel.

Accordingly, the observations contained in this brief of the Chamber of Commerce deal only with issues raised by the actual Board findings.

[4] *Twenty-eighth Annual Report of the National Labor Relations Board*, p. 76.

uals, partner or in a corporate form.[5] It would mean that no prudent management could go out of business, no matter how bleak the prospects of the company, if a particular labor situation (*e.g.*, a bargaining agent with a reputation for adamant and exorbitant demands, a threatened strike, an excessive resort to grievances) casts additional shadow—in its mind at least—upon the future of the enterprise, without subjecting the owners to back pay liability of astronomical magnitude.

The Board in rendering this decision is plainly breaking new ground. It admitted in its opinion that "there is no decided case directly dispositive of Darlington's claim that it had an absolute right to close its mill, irrespective of motive" (R. 15). In this respect the decision marks the second departure from precedent[6] on the part of the Board considered in this term of Court in the direction of encroachment upon rights of management hitherto regarded as unaffected by the Act. The concern of the Chamber, which filed an *amicus* brief in the first case, is equally grave with respect to the basic question presented by this one.

It is recognized of course that departures from administrative precedent on matters not previously set-

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[5] The breadth of the Board doctrine has caused misgiving even to the AFL-CIO, which concedes that it would be a violation of the Thirteenth Amendment to force a working proprietor to continue to run his plant (Br. p. 18).

[6] The reference is to *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, No. 14 (argued October 19, 1964) where the Board held that even in the absence of a contract or bargaining request, an employer is under a duty to bargain about contracting out work or discontinuing an operation. In its *Annual Report for* 1963, the Board stated:

> ". . . the Fibreboard case was the first finding of a violation of the Act where the change was not motivated by antiunion considerations . . .".

tled by Supreme Court authority do not necessarily mean that an administrative agency has misconstrued a statute. In this instance, however, the legislative history and background of the statute reinforces the conclusion of the majority of the court below that an employer has a right to go out of business for any reason. Moreover, we shall show that the new doctrine developed by the Board cannot be reconciled with decisions of the various circuit courts of appeal and that in reaching the result, the Board ignored distinctions which the Board itself had adverted to for many years in passing upon such questions as lockouts, runaway shops and plant relocations intended to frustrate union organization.

The second aspect of this case vitally affects the rights of stockholders and investors. This is the holding of the Board imposing liability for the unfair labor practices of the respondent corporation upon other corporations which were not holding companies in any sense of the term, and in which large segments of the stock were held by persons who had no relationship whatsoever to the principal respondent. The Board's conclusion that these corporations together with Darlington constituted one "single employer" goes far beyond the criteria enunciated for extra-corporate liability by this Court in *N.L.R.B.* v. *Deena Artware, Inc.*, 361 U.S. 398. But if the Board's holding here should be sustained it means that some power not spelled out in the Labor Relations Act allows the Board to disregard the recognized limits of corporate liability, thus placing in unwitting jeopardy the investments of stockholders in unaffiliated companies.

ARGUMENT

A. THE ACT DOES NOT COMPEL ANY EMPLOYER TO CONTINUE IN BUSINESS AGAINST HIS WILL

1. The Board Doctrine would deny management any realistic appraisal of all relevant economic factors

According to the Board's own official explanation,[1] a complete shutdown of a business "motivated *in part*" by the fact that the employees had selected a union to represent them is a violation of the Act. This means that even though a plant is involved in economic difficulties, sufficient in themselves to justify a decision to discontinue operations, the management of such a plant acts unlawfully if it views the advent of a union as accentuating these difficulties or regards the result of a union election as "the straw that broke the camel's back." Such an extreme view would force corporate fiduciaries to inflict additional financial losses upon their stockholders in situations in which their own business judgment tells them that the liquidation of a business should be immediately undertaken.

Wholly aside from the issue of whether there is an "absolute" right to discontinue a business, we submit that this holding is not in accordance with the law and has been repeatedly rejected by federal appellate courts.

Although the Board disclaims any power to hold that economic factors may not legitimately be considered by management when it decides to close a mill (thereby discontinuing the employment of a unionized work force), the Board's reasoning in this case rests on the premise that union activity can never be one

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[1] *Twenty-eighth Annual Report of the National Labor Relations Board*, p. 76, *supra*.

of those "economic factors". It is difficult to conceive of any rule of decision which encroaches more drastically upon the right of management to exercise ordinary business judgment in the course of its affairs.

In this particular case, the Board's approach—spelled out in the trial examiner's report—is that even though an employer is losing money and can ill afford higher payroll costs, the selection by the employees of a union which had campaigned on promises of higher wages and less arduous work assignments, does not justify such employer assuming the likelihood of higher costs. According to the Board, since the only legal effect of the election results was the imposition of a duty to bargain, the advent of an aggressive union does not mean that payroll costs would increase, for the law does not compel an employer to yield to union demands.

As we do not attribute even to the Board the theory that the negotiation of a union contract can ordinarily be accomplished by an employer without some concession on wages, manning, or fringe benefits—all items of cost—it appears that what the Board is really saying is that the certification of a labor union does not "inevitably" bring about higher costs. But certainly "inevitability" is a strange test to apply to the question of whether an employer acts in good faith. Day to day decisions of management on virtually every subject, *e.g.*, price changes, new markets, selection of advertising media, stockpiling, build up or reduction of inventory—are based on forecasts more speculative and on information less reliable than a judgment based on a publicized union program and the attitude of employees with respect to it. The view that management should refrain from action with respect to the

future only if the coming event is a foregone conclusion is a novel one.

In situations where a union has won an election in a plant already immersed in economic difficulties, it is difficult to understand why the Board should view as false or ill grounded, management fears that negotiations with that union would result in higher costs or an expensive strike.

Obviously a union which has won an election on promises of higher wages and less stringent work requirements has to make some substantial showing in negotiations in order to command the continued allegiance of the majority who voted for it. The task of persuading a union to temper its demands is one that challenges the skill and knowledge of an experienced industrial relations director. He must patiently discuss every union demand in detail. If he is rejecting union proposals on the ground of comparative wage and working standards in similar enterprises, he must be prepared to document his arguments with facts—not easily obtained except through time consuming surveys of conditions in other industries. If this position is based upon inability to pay, he must also buttress this by a disclosure and analysis of company records. If the union creates employee discontent by giving a false account of the company's position on given issues, he must inaugurate a program of communications to the workers, but so directed that it cannot be construed as "going over the heads of the union negotiators". Above all, he must avoid such legal pitfalls as placing nonbargainable issues on the table, refusing disclosure on certain topics, postponing negotiations, and the like. In other words, the successful

conduct of negotiations by management is in itself an expensive item.

Many companies, however, are too small to afford a full time industrial relations director. This is particularly true of manufacturing industries where small companies predominate and in which the average establishment employs less than a hundred production and maintenance workers. There are literally thousands of such companies.

These are the typical ones, not only in such industries as printing and apparel, but in many of the new industries. For example, in the manufacture of metal business furniture and storage equipment, 123 of the 213 establishments—slightly more than one-half—employ fewer than 50 workers.[8] In the electronic component industry, 264 of 457 plants employ less than 100, and the average worker complement in these plants is 35.[9] In the scientific instrument industry the situation is much the same, 460 of the 539 plants have fewer than 250 in their employ, and in this group the average establishment has less than 40.[10] Companies of this size could obviously not afford the regular services of industrial relations experts and the cost to such enterprises of dealing with unions must therefore be deemed an important economic factor. Certainly it would wipe out the resources of marginal units in the foregoing categories to require them to stay in business until the overly rigid terms of a union contract or an actual strike made them hopelessly non-competitive.

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[8] Source: Bureau of Labor Statistics, U.S. Dept. of Labor, Oct., 1959.

[9] Source: *Id.*, Oct., 1959.

[10] Source: *Id.*, Dec., 1955.

Moreover, if a company fails to meet demands which increase costs, a union is free to strike at any time. If it strikes without warning with a heavy influx of orders on hand, a company would then be faced with contingent liability to its customers for failing to meet deadlines. Yet the strike would still have the full protection of the Act.

If the Board is correct in its thesis that union activities can never be taken into account in a decision to close a plant, then even a stoppage of work does not justify an employer in deciding to dissolve an enterprise. He would still be under a duty to bargain to an impasse with the striking union, *N.L.R.B.* v. *Reed & Prince,* 118 F.2d 874 (C.A. 1, 1941), *cert. denied,* 313 U.S. 595 (1941); he cannot make unilateral changes in wages in order to obtain replacements, *N.L.R.B.* v. *St. Clair Lime Co.,* 315 F.2d 224 (C.A. 10, 1963); and if the union elects to engage in a slow down or a ban on overtime instead of striking, the harassed employer is not entitled under the law to any relief from the Labor Board, *N.L.R.B.* v. *Insurance Agents' Union,* 361 U.S. 477 (1960).

Granted, that such pitfalls and risks confront, to some degree, every employer who has to engage in collective bargaining. It is one thing, however, to say that these are necessary incidents to compliance with law for every employer who proposes to operate a plant in a business affecting commerce; it is quite another thing to say that an employer with a plant already engulfed in difficulty is powerless to avoid such peril and additional expense by shutting down the business entirely. As the Court of Appeals for the Sixth Circuit observed, management may take action "based on reasonably anticipated increased costs in-

stead of waiting until such costs actually materialize." [11]

2. Nothing in the legislative history or language of the Act supports the Board's approach

The notion that the Act prevents an employer unwilling to deal with a union from going out of business would have startled the members of the 74th Congress who, in 1935, enacted the Wagner bill containing in Section 8(3) the very language the Board now relies upon as requiring such a result. Neither of the committee reports in Senate or House even hints at such an intent.

Indeed, one of the principal fears expressed by opponents of the pending legislation at the Senate hearings was that the enactment of the Wagner bill might curtail employment by causing business firms unwilling or unable to assume the additional risk of collective bargaining to close their doors.[12] None of the Senators on the committee warned these witnesses that the pending bill would render such closing illegal, for apparently such a thought never occurred to them. In reporting the bill from the Senate Labor Committee, Senator Walsh, the chairman said:

> Mr. President, there are some fundamental rights an employer has, just as there are rights an employee has. *No one can compel an employer to keep his factory open.* No one can compel an employer to pay any particular wage. No one can compel an employer to hire others in addition to those he sees fit to hire. So with an employee; no one can compel him to work, no one can compel

[11] *N.L.R.B.* v. *Lassing*, 284 F.2d 781, at 783.

[12] *National Labor Relations Act*, Sen. Hearings, pp. 414-15.

> him to go on strike, no one can compel him to leave his work. 79th Cong. Rec. 7673, 74th Cong., 1st Sess. (1935). (Emphasis supplied.)[15]

Two years later, in one of the leading cases upholding the constitutionality of the Act, this Court recognized that the right of an employer to avoid the impact of the new statute by ceasing to be an employer was implicit. Thus, in *Associated Press* v. *N.L.R.B.*, 301 U.S. 103, a discriminatory discharge case, the Court answered the contention that under the Constitution an employer could not be compelled to retain a particular person in his employment, by stating—

> The Act does not compel the petitioner to employ any one. . . . *Id.*, 301 U.S. at 132.

It is also significant that during the first five years of the history of the Board—the so-called Madden period of 1935-1940—the agency itself never took the position that a firm could not go out of business because a union had appeared on the scene. In the late 30's, when the economy was depressed, the permanent closing of many marginal mills after successful union organizing drives was a commonplace. Yet, during this period official volumes of reported decisions of the Board, which agency at that time had authority to issue its own complaints, do not contain a single case indicating that the Board deemed a permanent closing to be an unfair labor practice. The Board did, however, develop the principle that an employer could not

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[15] Senator Walsh's explanation of the bill was given great weight by this Court in two cases that reached it many years after the statute was enacted. *N.L.R.B.* v. *Truck Drivers Local Union*, 353 U.S. 87 (right to lock out), and *Wisconsin Employment Relations Bd.* v. *Algoma Plywood & Veneer Co*, 336 U.S. 301 (authority of states to prohibit compulsory membership agreements).

evade his obligations under the Act by moving a plant which had been unionized, or threatened with unionization, to another labor market area. *Jacob & Ruth Klotz,* 13 NLRB 746; *Isaac Scheiber, et al,* 26 NLRB 937. Similarly the Board held that a lock-out undertaken to frustrate union organization was a discriminatory act against the employees, *Kuehne Mfg. Co.,* 7 NLRB 304; *Republic Steel Corp.,* 9 NLRB 219; and that the substitution of another type of messenger service for one that had been unionized was illegal, *Bank of America,* 26 NLRB 198.

It was not until 1941 that any cases may be found in which the Board held that even a discontinuance of one operation amounted to a violation of Section 8(a)(3). This first case was *Williams Motor Co.,* 31 NLRB 715, where a company engaged in repairing and servicing automobiles and rehabilitating second-hand cars had not gone out of business, but had simply closed its body and fender shop and subcontracted out the work generally performed in it. According to the Board, the company discovered that the men in the body and fender department were union adherents, closed the department solely for that reason, but had the same work done on its own account in another shop. This case was followed the same year, 1941, by *Newton Chevrolet,* 37 NLRB 334, a situation very similar on the facts, with the Board taking pains to emphasize that the paint shop, which had been discontinued in order to get rid of union employees, was still fully equipped, and that the respondent undertook, through another source, whatever repainting needed to be done on cars serviced for customers.

In none of the early cases, however, did the Board ever hold that an employer who decided to discontinue

permanently his entire business violated Section 8(a)(3) when he let his work force go, whatever his motivation might have been. Had there been such extreme holdings, Congress in all probability would have clarified the Act in this respect during the Taft-Hartley revision of 1947. But up to this time Section 8(a)(3) had been applied only to such subterfuges as transplanting operations, contracting out, and temporary shutdowns (lockouts)—and then only where the motive of stopping unionization was reasonably obvious.

The contention in the Board's opinion, in view of this background, that Darlington's dissolution was "literally proscribed" by Section 8(a)(3) of the Act (R. 16) is difficult to understand. The key word in Section 8(a)(3) is "discrimination", a word that suggests disparate treatment of one employee or a group of employees as against another. Granted, there are cases holding that this subsection is applicable to situations where an entire group is discharged or suspended from employment without distinction as between union and non-union men, but these all deal with situations where the employer, if the discharge was permanent, expected to recruit replacements either at the same location or at another. The Board relies on *Waterman Steamship Corporation*, 309 U.S. 206, where the offending employer had discharged the entire crew of a ship that had been at least partially unionized. There was nothing in the record, however, to indicate that the employer was going out of the steamship business entirely or even intended to scrap the particular ship.

In an attempt at *reductio ad absurdum* the Board, in its opinion,[14] states that "an employer with a staff

[14] The same argument appears in the brief *amicus*, AFL-CIO, p. 11.

of 100 employees violates Section 8(a)(3) if he discriminatorily fires 50 or 75 or even 99 of his 100 workers, or if he temporarily lays off all of them, but if he retaliates against them for their union activities by permanently discharging all of them, the finality of his conduct would make it lawful. The argument is self-defeating."

The short answer to this, of course, is that the discrimination lies in the fact that the hypothetical discharges of part of the work force or the lockout was intended to enable the employer to obtain substitutes or a chastened work force not inclined to unionization when operations were resumed. Surely there is a vast difference between this situation and a permanent discontinuance of operations.

The Board's reference to "firing" or "discharging" in the Darlington context is really an exercise in semantics which puts the cart before the horse. It is true that an employee whose job is permanently terminated because his company has closed down is in a plight similar to that of a dischargee, since neither has any prospect of regaining his old job with that particular employer. But in the former case it is the permanent closing of the plant which brings about the severance of employment. In other words, the so-called "discharge" by an employer closing his plant is not a measure undertaken to create a vacancy for another employee.

The Board's reliance on the preamble of the Act (R. 17-18) is equally misplaced. One of the preceding paragraphs makes it clear that the "obstructions to the free flow of commerce" to which Congress was alluding was "injury, impairment, or interruption of commerce" resulting from "certain recognized sources

of industrial strife and unrest". To be sure, the permanent closing of an industrial establishment means that its goods no longer enter into the flow of commerce, but it is certainly a strained construction of the preamble to equate a withdrawal from business, irrespective of motivation with a strike or lockout which interferes with the interstate activities of a business which is still a going concern.

3. The decision of the court below is supported by the weight of judicial authority

The proposition that an employer has no right to close his doors permanently if actuated by anti-union animus was rejected by the court below, which noted that other courts of appeal had long given explicit sanction to the right of discontinuance. There is nothing novel about this holding. As the court said, its reasoning is in accord with a number of cited decisions from other circuits, including the First, Fifth, Sixth, Seventh and Eighth.[15]

In one of these cases, *N.L.R.B.* v. *New Madrid Mfg. Co.*, 215 F.2d 908, 914, the Court of Appeals for the Eighth Circuit made abundantly clear the fundamental character of the right of an employer to go out of business permanently (R. 13, 14).

In its opinion, the Board attempted to distinguish *New Madrid* by referring to the court's observations

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[15] The Court cited *N.L.R.B.* v. *New England Web, Inc.*, 309 F.2d 696, 700 (C.A. 1, 1962); *N.L.R.B.* v. *Tupelo Garment Company*, 122 F.2d 603, 606 (C.A. 5, 1941); *N.L.R.B.* v. *Caroline Mills, Inc.*, 167 F.2d 212, 214 (C.A 5, 1948); *N.L.R.B.* v. *R. C. Mahon Co.*, 269 F.2d 44, 47 (C.A. 6, 1959); *Atlas Underwear Co.* v. *N.L.R.B.*, 116 F.2d 1020, 1023 (C.A. 6, 1941); *Jays Foods, Inc.* v. *N.L.R.B.*, 292 F.2d 317, 320 (C.A. 7, 1961); *N.L.R.B.* v. *New Madrid Mfg. Co.*, 215 F.2d 908, 914 (C.A. 8, 1954).

as merely *"obiter dictum"* (R. 14) pointing out that the Jones Manufacturing Company, a successor company, owned entirely by the manager of the New Madrid plant who had participated in the unfair labor practices and who after buying the New Madrid machinery started up the same business in another location, was ordered to reinstate the locked out employees. The Board failed to mention that Jones did not contest this part of the Order, but the Court suggested that Jones might have been able to obtain some modification had he sought relief; 215 F.2d 908, at 915. In any event, it is plain that this case falls into the lockout or runaway category and the Board's attempt to say that its holding in *Darlington* is in accord with the modified decree in *New Madrid* would be true only if a successor corporation to Darlington had resumed the same business, but refused to rehire the Darlington personnel.

Indeed, if there is something in the National Labor Relations Act which makes it unlawful for an employer to go out of business rather than to comply, the statute is unique in the field of regulatory legislation. Nothing in the Social Security Act nor in the Fair Labor Standards Act, for example, prevents employers from shutting down, even though the effect of such action is to deprive their employees of further retirement credits or the attainment of a fair minimum wage.

Nevertheless it is argued (AFL-CIO br., pp. 18-20) that legal doctrines developed in other branches of the law show that the court below was in error in declaring that an employer has an "absolute prerogative" to go out of business. The analogies drawn by amicus, however, to refute the validity of this statement have

virtually no bearing on the basic point made by the court.

The argument is made, for example, that (*id.*, p. 18) ". . . when an employer engages in a shutdown in violation of the Act, he can properly be made to resume operation, just as employees who engage in a forbidden strike can be ordered to resume work". This is perhaps true when an employer engages in an illegal lockout or an improper plant relocation, because he is doing this to influence future action by his employees with respect to union conduct. But while employees may be forbidden to strike for certain objectives, *e.g.*, to compel their employer to handle only products with a union label, there is nothing in the Act which forbids an employee to quit his job permanently. Thus an employee who personally resents having to process or transport material coming from an anti-union concern is free to abandon his employment. Logic suggests that an employer, corporate or individual, who would rather quit business entirely than deal with a labor organization has the same right.

The union brief (pp. 18, 19) concedes that the Thirteenth Amendment might bar an order preventing an individual manager or an induividual owner-operator from quitting, but observes that the constitutional protection against involuntary servitude applies only to individuals. It ignores the impact of the Fifth Amendment upon an administrative order compelling a corporation to remain in existence for the purpose of enabling its employees to engage in union activity. From the standpoint of the stockholders, such a device might well involve the taking of property without due process.

The contention that antitrust decisions (*id.*, p. 19) show that one company cannot agree with a competitor to shut down its business if the purpose of such agreement is to restrict competition in the industry, is obviously pointless. It ignores the distinction which the conspiracy cases made between concerted and individual action. Certainly nothing in the antitrust laws forbids the stockholders of Chrysler or Ford from liquidating their companies as long as such action is not the result of collusion or understanding with a competitor, even though the practical effect of such liquidation would give General Motors a virtual monopoly of automobile manufacture.

Another far-fetched analogy (*id.*, p. 20) is to *Griffin* v. *Prince Edward County*, 377 U.S. 218, holding that a state could not permit a county to abandon a public school system purely on racial grounds. This is scarcely in point, for the difference between the public obligations of a Governmental body and the obligations which can be legally imposed on private enterprises is manifest.

If analogies to the civil rights field shed any light upon the question, a much closer parallel may be found in the Public Accommodations provisions of the Civil Rights Law of 1964 (Title II, Public Law 352, 88th Cong.). Section 201(a) of this Act in language very similar to Section 7 of the National Labor Relations Act confers a "right" to enjoy services in hotels, restaurants, and places of entertainment "without discrimination . . . on the ground of race, color . . .". Section 203, like Section 8 of the Labor Relations Act, then implements this right by prohibiting any persons from withholding or denying such rights. What is the legal situation when a restaurant owner who, for rea-

sons of economic policy or even prejudice, is averse to serving Negro guests, closes his establishment permanently when he learns that a group of Negroes is about to arrive?

If the reasoning of petitioners and the amicus in No. 37 is applied to the Civil Rights Act, it inevitably follows that such a restaurant owner has violated Section 203. This is not the position that the Government is taking with respect to that statute, however, for in his argument this term in *Atlanta Motel, Inc.* v. *U.S.*, No. 515, and *Katzenbach* v. *McClung*, No. 543, the Solicitor General, in response to a question, informed the Court that a restaurant could lawfully avoid the statute by purchasing only local goods, 33 LW 3313. *A fortiori*, a restaurant which abandoned operations entirely would be in the clear. One looks in vain for any difference in language or Congressional intent to see why the opposite answer should be given with respect to the Labor Relations Act.

4. The Board's rationale is in conflict with the authorities

In holding that an employer violates the Act when he decides to close a plant which is running into economic difficulties, if he is motivated even in part by the arrival of a union upon the scene, the Board is advancing a proposition that has been repeatedly repudiated by the courts of appeal in numerous circuits.

In *New England Web, supra*, 309 F.2d 696, the Court of Appeals for the First Circuit had occasion to consider the shut down of a small New England plant which had run into difficulties with its customers because the weavers, being paid on a piece work basis, were more interested in speed than quality of production. In order to improve the quality of its products

the company decided to pay the weavers on an hourly basis. The weavers in turn sought representation by a labor union which won an election. At the first bargaining session the company informed the union that it was going to liquidate the plant, that it would accept no more orders and would utilize the weavers only to run out the beams already in the machines. The Board held that the closing of the plant was a violation of Section 8(a)(3). The court set aside this order. According to the Court, *id.*, at 700:

> We start with the proposition that a businessman still retains the untrammeled prerogative to close his enterprise when in the exercise of a legitimate and justified business judgment he concludes that such a step is either economically desirable or economically necessary. This prerogative exists quite apart from whether or not there is a union on the scene.

The Court pointed out that the company's economic problems had caused the officers to take some decisive measures to avert the rapidly deteriorating position of the company and that the decision to change the method of wage payments indicated this. The Court went on to say, *id.*, at 701:

> . . . The decision to change the mode of compensation was significant evidence of this. When this decision—far from immediately ameliorating the company's economic position—caused a walkout and a strike by the weavers and their subsequent unionization, then this was assuredly a new factor to be considered by the New England Web management in determining a future course of action. Viewed in the context of the shaky financial status with which New England Web was confronted, a decision—at that point—to go on no more cannot be said to be inherently implausible. . . .

> Certainly the company could reasonably expect the advent of the Union to affect its already precarious cost picture. The record indicates that the first act of the Union representative following the Union election on April 1 was to broach the subject of wages to Jarvis. Moreover, at the first bargaining session following the unionization—April 5—a union representative indicated to Jarvis that the workers would not return to New England Web for the wages which it had been previously offering.

The same position has been repeatedly taken in the Sixth Circuit. See *N.L.R.B.* v. *Adkins Transfer Company,* 226 F.2d 324; *N.L.R.B.* v. *R. C. Mahon Company,* 269 F.2d 44, cited with approval by the court below and *N.L.R.B.* v. *Lassing,* 284 F.2d 781, a 1960 decision. The latter case is particularly significant as it did not involve the complete shut down of the plant but a decision to discontinue one operation. The respondent in that case was a chain of gasoline service stations which had utilized its own trucks to distribute gas to its filling stations. It had been concerned, however, with the mounting costs of trucking equipment and had under consideration the possibility of using a common carrier rather than its own trucks.

Before any steps had been taken to arrange for common carrier service, however, the majority of the drivers joined a teamster union. The company then gave them separation notices telling them that it was going to transport gasoline in the future under a contract with a common carrier and notified the union to the same effect when the company and union representatives met later that morning. In *Lassing,* the Court said, *id.,* at 783:

> The Board contends that this case is not controlled by the ruling in the Adkins and Mahon

> cases because the respondent accelerated its proposed change in operations upon its learning that the three employees had joined the Union and before any demands for increased pay for said employees had been made upon it by the Union, and that such action constituted the discrimination found by the Board to exist.
>
> We do not agree. Although the Union had made no demand for increased pay, the evidence fully justified respondent's belief that such demands would be made and could not be met. Under the circumstances we do not believe it was incumbent upon the respondent to delay the effective date of its new method of operation previously decided upon before the advent of the Union. . . . The advent of the Union was a new economic factor which necessarily had to be evaluated by the respondent as a part of the overall picture pertaining to costs of operation. It is completely unrealistic in the field of business to say that management is acting arbitrarily or unreasonably in changing its method of operations based on reasonably anticipated increased costs, instead of waiting until such costs actually materialize.

The rule enunciated by the Board in the instant case is not only in conflict with these decisions in the First and Sixth Circuits, but cannot be reconciled with a leading case in the Fourth Circuit, the jurisdiction in which this controversy arose. This was the case of *Mount Hope Finishing Co.* v. *N.L.R.B.*, 211 F.2d 365, involving a Massachusetts finishing plant where the volume of business had been diminishing for some years. This plant closed its doors and sold its machinery after a union had won an election. Subsequently one of the principal stockholders, using equipment from the Massachusetts works, opened a new establishment for finishing grieg goods in North Carolina,

adopting the Mount Hope name and trademark. The Board, as in this case, found that the company had violated Section 8(a)(3) and ordered the Massachusetts personnel reinstated with back pay in the new plant.[16] On petition for review the court set aside this order, noting that because of decreasing business in New England, the company had been considering a Southern location even before the union organizing drive. It observed:

> The entrance of the union did not alleviate the trouble, *but served only to accentuate it,* and it was obvious to the company that it could not make a go of the business prior to 1951 when the union was formed, it would be no better able to succeed *after the pressure of the union* was added to the existing difficulties. 211 F.2d 365 at 372 (Emphasis supplied).

In the present case, the trial examiner—whose conclusions in this respect were accepted by the Board—found that certain factors cited by the company, *e.g.,* a projected loss of $40,000 for the remainder of the calendar year, a shrinking market because of Japanese textile imports, the high cost of completing a projected plant reconstruction program, etc. "were sufficient to support a decision to terminate operations" (R. 65). But having found that "but for the union's election victory, the decision (to liquidate) would not then have been made, the examiner then concluded that an unfair labor practice had been committed because "termination due to a mixture of reasons, some lawful and others not, violates the Act" (id.).

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[16] Significantly in this case, no complaint was issued until the existence of the North Carolina plant was discovered a few months after the Massachusetts closing. Accordingly, the Board holding was based on a run away shop theory; not on the ground that the liquidation of the old plant was illegal *per se.*

The Board has tried to distinguish *Mount Hope* and some of the other cited decisions on the ground that in those cases, the courts had found that the discontinuances were motivated by other factors than anti-union reasons. This is a mere play upon words. What the Board characterizes as an unlawful reason in this case was precisely what it was in *New England Web, Lassing,* and *Mount Hope, viz.,* the candid recognition that in an enterprise already beset by economic difficulties—costs exceeding revenues—the problem of reducing costs is predictably aggravated by the arrival of a union on the scene dedicated to a program of higher wages. Those cases hold that this is a legitimate factor for any employer to consider.[17]

5. The basic right to discontinue a business completely is not impaired by the fact that an employer controls other plants or enterprises which may continue to function.

Perhaps because of the unassailable logic of the foregoing judicial decisions, perhaps because of the inherent unreasonableness of the Board's extreme position, the Solicitor General in the brief submitted for

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[17] The only authority cited for the contrary view propounded by the Board and the trial examiner in their respective opinions (R. 9, 55, 65) is *N.L.R.B.* v. *Jamestown Sterling,* 211 F.2d 725-26 (C.A. 2). Examination of that decision shows, however, that the challenged Board order had nothing to do with plant closings or the discontinuance of an operation, but related merely to the discharge of some employees whom the employer contends had been negligent and delinquent in the performance of their jobs prior to any union activity on their part. The Court—correctly in our opinion—sustained a finding of the Board that this prior misconduct was a mere pretext, and hence not a defense to an alleged violation of Section 8(a)(3). Obviously there is a tremendous difference between a case where misconduct which might have justified discharge was condoned until the offenders joined the union, and a case where the probable impact of unionization upon costs was a factor taken into consideration.

petitioner in No. 41 has expressly declined (Br., pp. 41, 42, fn. 40) to defend the holding that an employer who abandons his whole business as "reprisal" for the union activities of his employees violates Section 8(a)(1) and 8(a)(3), notwithstanding that this was the very ground on which the Board rested its decision,[18] and that disagreement with this proposition was the principal basis for its reversal by the court below. Instead, this Court is told that it is unnecessary to pass upon this point since the Darlington mill, even though permanently discontinued, was only a part of the employer's business.

Assuming *arguendo* that the corporate relationships between Darlington and other corporations in the so-called Deering Milliken "complex" were such that Darlington may be deemed a mere division of a larger enterprise and hence the closing of its plant should be treated as if it were just one factory in a single multi-plant manufacturing corporation, it is submitted that the principles previously discussed are equally applicable. In other words, if a wholly independent single plant company can lawfully go out of business under the circumstances of this case, a multi-plant company can also shut down operations at one location as long as it refrains from transferring the business done there to some other plant. The decisions of the courts which have disapproved the Board's condemnation of an employer's discontinuance of an operation if prompted in part by the advent of a union on the scene, have not been confined to circumstances in which an entire business was dissolved.

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[18] The finding that the Milliken "complex," including Darlington, was a single employer, went only to remedy in the Board's opinion.

In *N.L.R.B.* v. *R. C. Mahon Co.*, 269 F.2d 44, 47 (C.A. 6, 1959) the discontinuance encompassed only the plant protection department of a large structural steel fabricator. The court said:

> We find nothing in the National Labor Relations Act which forbids a company, in line with its plans for operation, to eliminate some division of its work. As held in National Labor Relations Board v. Adkins Transfer Company, Inc., supra, [226 F.2d 324] an employer faced with the practical choice, either of paying enhanced wage rates demanded by a union or of discontinuing a department of its business, is entitled to discontinue.

In *Lassing*, 284 F.2d 781, *supra*, the employer did not close down the entire chain of filling stations. He eliminated only his own trucking service. And in *New England Web*, 309 F.2d 696, also discussed, *supra*, the closed plant was only one of a number of textile mills controlled by related corporations which—at least according to the Board's findings—constituted a single employer.

Ordinary principles of logic reinforce these court decisions. Thus if an independent manufacturer of typewriters may lawfully decide to close his plant for the same reasons which motivated Mahon or New England Web, it would be absurd to say that a multi-plant manufacturer of office equipment violates Section 8 (a)(3) if, under identic circumstances, it decided to get out of the typewriter business, and closed down its typewriter division.

B. THE IMPOSITION OF RESPONSIBILITY FOR UNFAIR LABOR PRACTICES OF ONE CORPORATION UPON OTHER CORPORATIONS HAVING WIDELY DIFFERENT SETS OF STOCKHOLDERS VIOLATES FUNDAMENTAL PRINCIPLES OF CORPORATION LAW.

All but lost sight of in the Board's effort to merge Darlington and numerous "related" corporations into a single employer is the fact that it was Darlington, and Darlington alone, which committed the actions found by the Board to have violated the Act. It was not until the Board concerned itself with formulating a remedy that the agency chose to disregard the separate corporation structures of Deering Milliken, Darlington, and the related corporations, and held them all to constitute a single employer for the purposes of back pay and reinstatement. The corporations other than Darlington are accordingly not held accountable as co-perpetrators of any unfair labor practices. Rather, the Board would hold them financially responsible for the practices of Darlington on a theory of vicarious liability, attributable to their role in what the Board termed "the Deering-Milliken complex."

1. The Board's theory flies in the face of the pronouncements of reviewing courts

It is axiomatic in our jurisprudence that separate corporate entities are not to be lightly disregarded, even where—contrary to facts in this case [19]—one corporation holds a majority stock interest in another. "The fact that one corporation owns a majority of

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[19] In the case at bar, Deering Milliken did not hold a majority of stock in Darlington. Inasmuch as it held only 41.4% of Darlington's stock there was no parent-subsidiary relation. The Board, however, inferred majority ownership by adding to the Deering Milliken holdings the stock held by individual members of the Milliken family, consisting of 27 relatives and a decedent's estate.

the stock of another and through its stock control selects from its own directors and officers a majority of all of the directors or officers of the other corporation, without more, does not justify the application of the instrumentality rule", *Taylor* v. *Standard Gas and Electric Co.*, 96 F.2d 693, 705 (C.A. 7, 1938), rev'd on other grounds, 306 U.S. 307. The enormity of the Board's departure from the traditional concepts of corporate liability is measured by its framing of a back pay and reinstatement order encompassing all corporations in which a particular "family," the Millikens, held substantial interests.

The Board's formula for piercing the corporate veil was disarmingly put: "It is now well established that for two or more legal entities to constitute a 'single employer' for purposes of assessing liability for unfair labor practices it must be shown that there was a sufficient degree of common ownership and common control of labor relations and operations so that it may be said that they are engaged in a common enterprise." Even this plausible phrasing, with its emphasis on "sufficient degree" and "common enterprise", serves to misstate and diminish the rigorous tests applied where the corporate entity may be disregarded. Contrast the Board's statement with that of Mr. Justice Cardozo in *Berkey* v. *Third Avenue Railway Co.*, 244 N.Y. 84; 155 N.E. 58 (1926):[20] "Dominion may be so complete, interference so obtrusive, that by the general rules of agency the parent will be a principal and the subsidiary an agent."

If the courts affirm the Board's theory that the normal business practices of related corporations suffice

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[20] Quoted with approval by this Court in *N.L.R.B.* v. *Deena Artware, Inc.*, 361 U.S. 398, 403 (1960).

to transform them into a common enterprise and thus a single employer, it would have the startling effect of stripping limited liability from a large segment of our domestic corporations. In short, the features upon which the Board relies as constituting sufficient interrelationship to pierce the corporate veil, are the very incidents of business practice which the concepts of separate entity and limited liability were designed to protect.

It is not our intention to argue here the validity of the Board's findings of fact, but rather to concern ourselves with the criteria that the Board invokes to destroy separate corporate status. With respect to common ownership, the Board finds in effect a parent-subsidiary relationship even though the supposed parent does not own a majority of the stock of the subsidiary. It arrives at its conclusion by tacking the number of shares held individually by members of a family, no matter how remote the kinship,[21] to the total held by the alleged parent corporation.[22] The Board

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[21] Implicit in this approach is the notion that the individual necessarily is subservient to his family, and acts in concert with it in respect to all corporate matters. The "family" to which the Board adverts is not, it might be noted, even the immediate family in the commonly accepted sense, but consists of the 27 individual lineal descendants of one Seth Milliken, and one estate operated by a bank. We are aware of no rule of law which assumes the dominance of the family over its adult constituents in the decision-making process. Such a view is far more suited to the patriarchal society of, let us say, pre-Communist China, than to the realities of everyday life in the United States. Compare *Mount Hope Finishing Co.* v. *N.L.R.B.*, 211 F.2d 365 (C.A. 4, 1954), where an adult son, a vice-president and stockholder in a corporation controlled by his father, not only opposed his father's desire to close or relocate the plant, but took the witness stand on behalf of the General Counsel.

[22] 139 NLRB at 256.

asserts the test of "common control" is sufficiently met (1) if Deering Milliken, acting as a selling agent, a typical function in the textile industry, sold the goods and factored the accounts receivable, at a regular commission rate, for Darlington, and handled the latter's tax and insurance matters; (2) if Deering Milliken Service Corporation, whose stock was owned not by Deering Milliken but by Darlington and the other manufacturing companies, purchased equipment and cotton, and provided cost and quality control services, for its corporate stockholders; and (3) if Roger Milliken, the president of all but one of the related corporations, received personnel and financial reports from each corporation in which he held office, and was consulted and gave recommendations on various aspects of those corporations' affairs.

The key connecting link among the corporations, as the Board sees it, was the election of members of the Milliken "family" to executive positions and directorships, and particularly the elevation of Roger Milliken to the presidency, of each of the corporations. The Board's attachment of special weight to common corporate officers ignores the repeated admonitions of courts of appeals that this factor is not sufficient to invoke the instrumentality rule. In *Fisser* v. *International Bank*, 282 F.2d 231 (C.A. 2, 1960), where the court refused to hold a parent bound to submit to an arbitration agreement executed by its subsidiary, the court noted, 282 F.2d at 238, that:

> "It would, of course, be a complete disregard of the basic structure of corporation law to hold Allied, merely because it elected the respondent's officers to be its officers, forfeited its entity and deprived its parent stockholder of immunity from liability for its contracts."

The Seventh Circuit in *Steven* v. *Roscoe Turner Aeronautical Corporation,* 324 F.2d 157, 161 (C.A. 7, 1963), reiterated that rule:

> "While stock control and common directors and officers are generally prerequisites for application of the instrumentality rule, yet, they are not sufficient to bring the rule into operation. . . . Such factors are common business practice and exist in most parent and subsidiary relationships."

Yet, it is from this discredited premise that the Board's imputation of liability apparently follows. For, if no meaningful significance can be attached to Roger Milliken's election to the presidency of Darlington, then his performance of the routine duties of his office, *e.g.,* circulation and receipt of reports and memoranda, consultation, and advice, does not change the legal situation. To hold otherwise would reduce the individual invested with the presidency of a corporation to a mere figurehead, whose interest in his corporation's progress must be satisfied by newspaper accounts of his firm's activities.

The courts have refused to countenance so unrealistic a view of the corporate office or the corporate entity. Indeed, it is clear, in cases where the proposed remedy is so drastic a penalty as disregard of the corporate entity, that they are unwilling to substitute the Board's loose notion of "common enterprise" for the strictly defined standards of instrumentality or "alter ego".

Perhaps the most relevant of the recent cases is *Fisser* v. *International Bank,* 282 F.2d 231 (C.A. 2, 1960), where the question presented was whether a parent, International, was bound to submit to an arbitration agreed to by its alleged instrumentality, Allied, and a coal importer, Fisser. The salient facts were

these. International, through its president, Vreeland, agreed with a firm of maritime brokers, van Ommeran, to finance a business which would involve the chartering of ships. Vreeland told van Ommeran that International would create a company, Allied, to operate ships and transport cargo, and would furnish Allied with all necessary finances and stand behind its performance. Van Ommeran told Fisser that it was acting on behalf of Allied, a company "nominated and controlled" by International, and furnished Fisser a list of International's officers and directors.

Allied was organized by one of International's subsidiaries. International owned 50 percent of its stock and held the remaining 50 percent until the loan which it had agreed to make to Allied was repaid. Vreeland became Allied's president, International's treasurer became its treasurer, and an attorney who represented some of International's subsidiaries was its secretary. These individuals also comprised three of the four directors.

Thereafter, Vreeland gave van Ommeran authority to contract, acknowledged van Ommeran's confirmation of that authority in a letter signed by him on International stationery as its president, and advised van Ommeran that Allied had retained a manager authorized to discuss any business matters. Thereafter the contract with Fisser was approved by Allied's directors and signed by Vreeland as its president, after it had been scrutinized by International's attorneys. Vreeland took steps to obtain a loan but withdrew his request. Allied, which never had capital in excess of $500.00 and never received a loan from International, took no steps toward performance of its contract and accordingly was sued.

The court refused to disregard Allied's separate corporate status. In finding that it was not the alter ego of International, the court listed the three elements which, it said, must be proved if the instrumentality rule is to be invoked, 282 F.2d at 238:

> "(1) Control, not mere majority or complete stock control, but complete domination not only of finances, but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and
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> (2) Such control must have been used by the defendant to commit fraud or worse, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest and unjust act in contravention of plaintiff's legal rights; and
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> (3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of."

The court found none of the elements present. Unlike the Board in the case at bar, the court was unwilling to presume that the responsible executives of a subsidiary were acting, with respect to that corporation's affairs, in their capacity as executives of the parent. "It is equally plausible", the court states, "to ascribe the acts to the same individuals as Allied's executives participating in a manner normal and usual for directors of an independent corporation." To hold otherwise would "be a complete disregard of the basic structure of corporation law."

Control, even if it existed, was not used to perpetrate the violation of any legal duty, nor did any breach of duty proximately cause the injury complained of. The latter point is particularly significant to the case

at bar, for there is not a shred of evidence—nor did the Board look for any—to indicate that the members of the Darlington board of directors in recommending dissolution of that corporation were acting pursuant to any interest other than their relationship with Darlington. Indeed, the evidence strongly points to the contrary conclusion, for if the proposed liquidation of Darlington were an item of major importance to the corporations involved in the Deering Milliken "complex", it would be expected that the boards of directors of the other corporations would have been convened to pass upon the Darlington situation. Yet the only board of directors which acted upon the closing was that of Darlington itself.

Steven v. *Roscoe Turner Aeronautical Corporation, supra,* is also very much in point, for there, far more control than that found by the Board to exist in the Darlington situation was present. Yet the court was unwilling to impute liability to a parent corporation. This was a case—a wrongful death action—where plaintiff charged that the liability of TAC in an air crash should be imputed to its parent, RTAC. The evidence revealed that the owners of RTAC owned 70 percent of the stock of TAC; that there was a substantial identity of officers and directors of the two corporations, including one individual, Turner, who was chairman of the Board of RTAC and president of TAC; and that the acts of the manager and vice-president of TAC were subject to the approval of Turner, that the manager had no authority to hire pilots without Turner's approval, and that Turner or another officer of both corporations made one or two trips per week to TAC to help supervise its operations. In affirming the granting of a motion for summary judgment by defendant, the court noted that the supervi-

sion by Turner "showed merely the sound business practice of aiding [the general manager-vice-president] in the performance of his managerial duties for TAC."

If the test of "common enterprise", as the Board sees it, were sufficient to dissolve traditional corporate lines, no two corporations in parent-subsidiary relationships—or even where the same person is the majority stockholder of both—could engage in related businesses with any assurance that they would be insulated from any corporate transgressions of the other. We submit that if a business creditor injured by Darlington's dissolution were to look for relief to the other corporate entities encompassed by the Board order, his attempt to impute liability would meet summary rejection at the hands of any court. If so, there is no justification for the Board to assert new standards of relief merely because it regards the Darlington employees as entitled to the role of creditors.

Liberal as the courts have been in allowing wide latitude to the Board in the fashioning of remedies, they have not been willing to grant the Board license to disregard the elements of basic corporation law in imputing liability to employers other than the primary employer. *Press Company* v. *N.L.R.B.*, 118 F.2d 937 (C.A.D.C., 1940); *N.L.R.B.* v. *Norma Mining Corporation*, 206 F.2d 38 (C.A. 4, 1953); *N.L.R.B.* v. *Aluminum Tubular Corporation*, 299 F.2d 595 (C.A. 2, 1962); *Mt. Hope Finishing Co.* v. *N.L.R.B.*, 211 F.2d 365, 372 (C.A. 4, 1954); *N.L.R.B.* v. *Brown & Root, Inc.*, 203 F.2d 139 (C.A. 8, 1953); *N.L.R.B.* v. *Tupelo Garment Co.*, 122 F.2d 603 (C.A. 5, 1941). See also *Bachman Machine Co.* v. *N.L.R.B.*, 266 F.2d 599 (C.A. 8, 1959); *Roy & Sons* v. *N.L.R.B.*, 251 F.2d 771 (C.A. 1, 1958).

2. The Board's decision disregards the immunities of minority stockholders

It was an assumption vital to the Board's determination that Deering Milliken in effect was the parent of Darlington was that no distinction should or could be drawn between the stock in Darlington held by Deering Milliken Inc. and that held by individual members of the Milliken "family." If such individual stock holdings were not included in the computation, "Deering Milliken" did not hold a majority interest in Darlington. The agency's assumption, of dubious merit generally and wholly unsupportable on the facts of the case at bar, runs roughshod over the traditional rights of minority stockholders.

The plight of the minority stockholder is dramatized by the Board's assessment of liability against a number of corporations, related in the sense that the Milliken family held some stock in each, but each of which is owned in part by non-Milliken interests.[23] A potential prudent purchaser of stock in Deering Milliken, Inc. or in one of the other related manufacturing corporations reasonably well advised of the character of those corporations, would not for a moment suspect that the worth of his investment could be drained by imposition of back pay attributable to Darlington's unfair labor practices. Looking to the holdings of Deering Milliken as a corporation he would find no parent-subsidiary relationship with, or for that matter, any indication of control over Darlington.

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[23] Approximately 45 per cent of the shares of one of the Milliken group, Hartsville Cotton Mill, were owned by outside stockholders. At the other cotton mills, outside stock ownership ranged from 12 per cent to 44 per cent.

It is at best paradoxical to visit a vicarious liability upon arms-length purchasers of stock who are barred at the threshhold from knowing of their peril. Where Corporation A owns a controlling interest in Corporation B, any stockholder in Corporation A is at least aware of the potential danger to which he is exposed, for corporate ownership of a majority interest in another corporation, at least presents the conceivable risk of actual domination and consequent liability.

The Board's approach would appear to subject a stockholder to an unprecedented liability for the activities of any corporate officer who in his own right owns or controls a second corporation. Assume the situation of a stockholder in a manufacturing concern whose president owns a small percentage of stock, 5 percent or 10 percent, in that corporation. If the corporation president were to buy a majority interest in a trucking company, for example, is the stockholder of the manufacturing corporation to be held accountable through his investment for the liabilities incurred through corporate activities of the trucking concern?

Rejecting the well-established principle that "The insulation of a stockholder from the debts and obligations of his corporation is the norm, not the exception", *N.L.R.B.* v. *Deena Artware,* 361 U.S. 398, 403 (1960), the Board presumably would respond in the affirmative. To reverse the presumption enunciated in *Deena Artware,* of course emasculates the concept of limited liability. It would be absurd to impose upon an investor in Ford Motor Company the burden of a liability incurred by any corporation owned by a member or members of the Ford family. Yet this is the logical outgrowth of the Board's theory of a "common enterprise", arising in part from its blindness to the es-

sential fact that an individual and a corporation are not one and the same.[24]

If the corporate entity is to be deprived of its traditional immunities in this fashion, virtually no individual purchaser of its securities can escape the very real risk that the acts of the corporation's officers in the purchase or direction of otherwise unrelated corporations, will bind him to an unforeseen and unforeseeable diminution of his purchase.

CONCLUSION

For the foregoing reasons, it is respectfully urged that the decree of the Court of Appeals be affirmed. If this Court, however, does not accept the holding of the court below to the effect that a business can be permanently liquidated, in whole or in part for any reason, it should be observed that the case is not ripe for final decision and should be remanded. The court below did not pass upon the issue of whether substantial evidence considered on the record as a whole supported two findings crucial to the 3-2 decision of the Board *viz.*,

(1) Respondent, Darlington, in closing its plant, was motivated by discriminatory reasons; and

(2) The so-called "Dearing Milliken complex" constituted a single employer.

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[24] In *Mount Hope Finishing Co.* v. *N.L.R.B.*, 211 F.2d 365, 372 (1954), the court expressly relied on the fact that a stockholder had substantial, though minority (36%) stock holdings in one corporation and no stock in the other corporation, in reaching the conclusion that the two corporations were not a single enterprise.

This aspect of the matter was noted by the Solicitor General, who suggested (Pet. for Cert., p. 10, n. 6a):

> Since the court did not consider whether the finding was sustained by substantial evidence, the issue would appear to be open on remand. For the purposes of this petition we take the case on the assumption made by the court below.

It is submitted that questions of such crucial importance to American industry should not be finally decided in the absence of Court of Appeals review of the Board's findings of fact.

Respectfully submitted,

EUGENE ADAMS KEENEY
United States Chamber of Commerce
1615 H Street, N.W.
Washington, D. C. 20005

GERARD D. REILLY
LAWRENCE T. ZIMMERMAN
1120 Tower Building
Washington, D. C. 20005

November 25, 1964

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SUPREME COURT, U. S.

No. 27 and No. 41

Supreme Court of the United States

OCTOBER TERM, 1964

TEXTILE WORKERS UNION OF AMERICA, *Petitioner*,

v.

DARLINGTON MANUFACTURING COMPANY, ET AL., *Respondents.*

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

DARLINGTON MANUFACTURING COMPANY, ET AL., *Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENT DARLINGTON MANUFACTURING COMPANY

SAM J. ERVIN, JR.
Morganton, N. C.

THORNTON H. BROOKS
440 West Market Street
Greensboro, N. C.

Attorneys for Respondent Darlington Manufacturing Company.

November 25, 1964.

TABLE OF CONTENTS

	Page
Statutes Involved	1
Questions Presented	2
Statement	2
Summary of Argument	14
Argument	21
I. The Court of Appeals Was Correct in Holding That a Company Has an Unqualified Right Permanently and in Good Faith To Go Out of Business for Any Reason	21
A. The National Labor Relations Act Does Not by Its Terms or in Its Policy Reach the Complete and Permanent Liquidation of a Business	24
B. The Legislative History Shows That Congress Did Not Intend To Restrict a Company's Right To Go Out of Business	30
C. The Decided Cases Support the View of the Court of Appeals That the National Labor Relations Act Does Not Restrict an Employer's Right To Go Out of Business	32
D. The Absence of a Permissible Remedy Rationally Related to the Supposed Violation Demonstrates the Error of the Board's Construction of the Statute	38
II. The Board Erred as a Matter of Law in Holding That Darlington Went Out of Business for Discriminatory Rather than Economic Motives	43
III. Darlington's Alleged Relationship to Other Corporation Cannot Make Its Liquidation, If Lawful Standing Alone, an Unfair Labor Practice	51
IV. The Interpretation of the Act Asserted by Petitioners Raises Grave Constitutional Issues	67
A. The Act as Construed by the Board Exceeds the Power of Congress To Regulate Commerce	67
B. The Act as Construed by the Board Deprives Darlington and Its Stockholders of Rights in Violation of the Fifth Amendment	69

Page

V. The Question of Remedy Need Not Be Reached by This Court Whatever Its Disposition of the Substantive Merits; in Any Event the Union's Proposal That Darlington Be Made To Reconstitute Itself Should Be Summarily Rejected 74

Conclusion 81

Appendix 82

TABLE OF CITATIONS

Cases:

A.P.W. Prod. Co., 137 N.L.R.B. 25 (1962) 80, 81

American Communications Ass'n v. *Douds*, 339 U.S. 382 (1950) 68

Associated Press v. *NLRB*, 301 U.S. 103 (1937) 26

Atlas Underwear Co. v. *NLRB*, 116 F.2d 1020 (6th Cir. 1941) 34, 37

Barbers Iron Foundry, 126 N.L.R.B. 30 (1960) 78

Barnes v. *Maryland ex rel. Pinckney*, No. 163, Md. Ct. App., Nov. 17, 1964 29

Brooks-Scanlon Co. v. *Railroad Comm'n*, 251 U.S. 376 (1920) 29

Browne v. *Hammett*, 133 S.C. 446, 131 S.E. 612 (1926) 73

Chicago, R.I. & P. Ry. v. *United States*, 284 U.S. 80 (1931) ... 70

Cleveland-Cliffs Iron Co., 30 N.L.R.B. 1093 (1941), *enforced*, 133 F.2d 295 (6th Cir. 1943) 78

Clyde Taylor Co., 127 N.L.R.B. 103 (1960) 37

Colonial Fashions, Inc., 110 N.L.R.B. 1197 (1954) 78

Deering Milliken, Inc. v. *Johnston*, 295 F.2d 856 (4th Cir. 1961) 12

Greenwood v. *Freight Co.*, 105 U.S. 13 (1881) 73

James Hotel Co., 142 N.L.R.B. 761 (1963) 38

Jays Foods, Inc. v. *NLRB*, 292 F.2d 317 (7th Cir. 1961) 47

Leo L. Lowy 3 N.L.R.B. 938 (1937) 79

Linden v. *United States* 268 U.S. 5 (1925) 69

Lord Baltimore Press 142 N.L.R.B. 328 (1963) 37

M. Yoseph Bag Co., 128 N.L.R.B. 211 (1960) 78

Matthews v. *Bank of Allendale*, 60 S.C. 183, 38 S.E. 437 (1901) 73

Mount Hope Finishing Co. v. *NLRB*, 211 F.2d 365 (4th Cir. 1954) 41, 47, 62

Cases—Continued

	Page
NLRB v. *A. K. Allen Co.*, 252 F.2d 37 (2d Cir. 1958)	63
NLRB v. *A.P.W. Prod. Co.*, 316 F.2d 899 (2d Cir. 1963)	80, 81
NLRB v. *Adkins Transfer Co.*, 226 F.2d 324 (6th Cir. 1955)	47
NLRB v. *Arnolt Motor Co.*, 68 N.L.R.B. 868 (1946) *aff'd* 173 F.2d 597 (7th Cir. 1949)	63
NLRB v. *Calcasieu Paper Co.*, 203 F.2d 12 (5th Cir. 1953)	63
NLRB v. *Caroline Mills, Inc.*, 167 F.2d 212 (5th Cir. 1948)	34
NLRB v. *Deena Artware, Inc.*, 361 U.S. 398 (1960)	60, 64
NLRB v. *Don Juan, Inc.*, 178 F.2d 625 (2d Cir. 1949)	64
NLRB v. *Donnelly Garment Co.*, 330 U.S. 219 (1947)	66
NLRB v. *Erie Resistor Corp.*, 373 U.S. 221 (1963)	50
NLRB v. *Gibraltar Industries, Inc.*, 307 F.2d 429 (4th Cir. 1962)	62
NLRB v. *Grace Co.*, 184 F.2d 126 (8th Cir. 1950)	34
NLRB v. *Hopwood Retinning Co.*, 98 F.2d 97 (2d Cir. 1938)	63
NLRB v. *Houston Chronicle Pub. Co.*, 211 F.2d 848 (5th Cir. 1954)	47
NLRB v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937)	68
NLRB v. *Jones Sausage Corp.*, 257 F.2d 878 (4th Cir. 1958)	62
NLRB v. *Kingsford*, 313 F.2d 826 (6th Cir. 1963)	47
NLRB v. *Lassing*, 284 F.2d 781 (6th Cir. 1960), *cert. denied*, 366 U.S. 909 (1961)	47
NLRB v. *Lewis*, 246 F.2d 886 (9th Cir. 1957)	63
NLRB v. *Long Lake Lumber Co.*, 138 F.2d 363 (9th Cir. 1943)	63
NLRB v. *Lund*, 103 F.2d 815 (8th Cir. 1939)	62
NLRB v. *Mackay Radio & Tel. Co.*, 304 U.S. 333 (1938)	68
NLRB v. *Missouri Transit Co.*, 250 F.2d 261 (8th Cir. 1957)	56
NLRB v. *McCatron*, 216 F.2d 212 (9th Cir. 1954)	63
NLRB v. *Neiderman*, 334 F.2d 601 (2d Cir. 1964)	46
NLRB v. *New England Web, Inc.*, 309 F.2d 696 (1st Cir. 1962)	43, 46
NLRB v. *New Madrid Mfg. Co.*, 215 F.2d 908 (8th Cir. 1954)	16, 34, 35, 78
NLRB v. *Norma Mining Corp.*, 206 F.2d 38 (4th Cir. 1953)	35, 52, 53
NLRB v. *O'Keefe and Merritt Mfg. Co.*, 178 F.2d 445 (9th Cir. 1949)	63
NLRB v. *Pittsburgh S.S. Co.*, 340 U.S. 498 (1951)	66

Cases—Continued

	Page
NLRB v. *Preston Feed Corp.*, 309 F.2d 346 (4th Cir. 1962)	54
NLRB v. *R. C. Mahon Co.*, 269 F.2d 44 (6th Cir. 1959)	47
NLRB v. *Rapid Bindery, Inc.*, 293 F.2d 170 (2d Cir. 1961)	47, 48
NLRB v. *Savoy Laundry, Inc.*, 327 F.2d 370 (2d Cir. 1964)	56
NLRB v. *Somerset Shoe Co.*, 111 F.2d 681 (1st Cir. 1940)	79
NLRB v. *Summers Fertilizer Co.*, 251 F.2d 514 (1st Cir. 1958)	63
NLRB v. *Tupelo Garment Co.*, 122 F.2d 603 (5th Cir. 1941)	34
NLRB v. *United States Air Conditioning Corp.*, 302 F.2d 280 (1st Cir. 1962)	63
NLRB v. *Wallick*, 198 F.2d 477 (3d Cir. 1952)	55
NLRB v. *Walton Mfg. Co.*, 369 U.S. 404 (1962)	19, 66
NLRB v. *Whittier Mills Co.*, 111 F.2d 475 (5th Cir. 1940)	63
Oklahoma Natural Gas Co. v. *Oklahoma*, 273 U.S. 257 (1927)	73
Phelps Dodge Corp. v. *NLRB*, 313 U.S. 177 (1941)	16, 38, 75
Phillips v. *Burlington Industries, Inc.*, 199 F. Supp. 589 (N.D. Ga. 1961)	34
Phillips v. *Nelson*, 108 F.2d 725 (10th Cir. 1939)	29
Railroad Retirement Bd. v. *Alton R.R.*, 295 U.S. 330 (1935)	70
Randolph Corp., 89 N.L.R.B. 1490 (1950)	78
Ray Nichols, Inc., 15 N.L.R.B. 846 (1939)	78
Republic Steel Corp. v. *NLRB*, 311 U.S. 7 (1940)	69
Reynolds Corp., 74 N.L.R.B. 1622 (1947)	78
Southport Petroleum Co. v. *NLRB*, 315 U.S. 100 (1942)	15, 32, 33, 34, 78
Sterling v. *Constantin*, 287 U.S. 378 (1932)	70
United Bhd. of Carpenters v. *NLRB*, 365 U.S. 651 (1961)	69, 80
United States v. *International Boxing Club*, 348 U.S. 236 (1955)	68
Universal Camera Corp. v. *NLRB*, 340 U.S. 474 (1951)	19, 66
United States v. *Shubert*, 348 U.S. 222 (1955)	68
Virginian Ry. v. *System Federation No. 40*, 300 U.S. 515 (1937)	70
Williams Motor Co. v. *NLRB*, 128 F.2d 960 (8th Cir. 1942)	55

Statutes and Regulations:

Constitution of the United States: Page

Article I, § 8, Cl. 3 ..... 19, 67, 68, 69
Amendment V 19, 69, 71, 72
Administrative Procedure Act, § 10(e), 60 Stat. 243, 5 U.S.C. § 1009(e) 12
Civil Rights Act of 1964, Tit. II, 78 Stat. 243 28
Federal Aviation Act § 401(j), 72 Stat. 754, 49 U.S.C. § 1371(j) 29
Interstate Commerce Act § 1(18), 24 Stat. 379, as amended, 49 U.S.C. § 1(18) 29
Labor Management Relations Act, 1947, § 1, 61 Stat. 136, 29 U.S.C. § 141 ..... 27, 30, 82
National Labor Relations Act, 49 Stat. 449 (1935), as amended, 29 U.S.C. §§ 151 *et seq.* 14, 15, 30, 46, 52, 67, 68
§ 2(3) 25, 82
§ 8(a)(1) 21, 24, 37, 83
§ 8(a)(3) 2, 10, 12, 15 21, 23, 24, 38, 47, 50, 83
§ 8(a)(5) 10, 21, 24, 84

South Carolina Code of Laws (1942)

§ 12-601 73
§ 12-641 71
§ 12-642 71

Miscellaneous:

Hearings Before the Senate Committee on Education and Labor on S. 2026, 73d Cong., 2d Sess. (1934) 32
79 Cong. Rec. 7673 (1935) 15, 31
79 Cong. Rec. 9682 (1935) 15, 30

Supreme Court of the United States

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No. 37 and No. 41

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENT DARLINGTON MANUFACTURING COMPANY

STATUTES INVOLVED

Pertinent sections of the Labor Management Relations Act and the National Labor Relations Act are set out in an appendix to this brief (pp. 82-84, *infra*).

QUESTIONS PRESENTED

(1) Can the action of a corporate employer in terminating its business completely and permanently, irrespective of its reasons, violate Section 8(a)(3) or any other section of the National Labor Relations Act?

(2) Does a decision to terminate a business completely and permanently violate Section 8(a)(3) because one of the motives therefor was a reasonable belief that the conduct of a particular labor union elected to represent the employees would make it economically impossible to continue the business?

(3) Can a corporate employer's otherwise lawful decision to terminate its business and liquidate itself be rendered illegal by its relations with other corporations that in substantial part are under different ownership?

(4) If construed as prohibiting an employer from completely and permanently terminating its business, is Section 8(a)(3) constitutional?

STATEMENT

The Darlington Manufacturing Company, a South Carolina corporation, was founded in 1883. (R. 479). From that time until November 1956 it operated a print cotton mill at Darlington, South Carolina, manufacturing and selling cotton goods. It has no other plant or office.

Some time after it commenced operations, Darlington began selling its products through Deering, Milliken & Co. ("Deering Milliken"),[1] a New York cor-

[1] In 1960 Deering, Milliken & Co. participated in a corporate merger from which resulted Deering Milliken, Inc., respondent here. (R. 235-36).

poration, with its principal office and place of business in New York, New York. At that time and for some years thereafter, Darlington and Deering Milliken were under different ownership and control. The record shows, however, that in 1937 Darlington went through a bankruptcy proceeding as a result of which Deering Milliken, as one of the largest creditors, received in payment of its debt about 41 per cent of Darlington's common stock. (R. 391, 437). The majority stockholders of Deering Milliken were certain individuals who were members of a larger group consisting of the descendants of Seth Milliken (hereinafter sometimes referred to as the "Milliken family"). After 1937 certain members of this group also acquired stock in Darlington. When Darlington was liquidated in 1956, it had outstanding 150,000 shares of common stock, owned as follows (R. 1310):

Deering, Milliken & Co.	41.4%
Cotwool Manufacturing Corp. (of which members of the Milliken family owned a majority of the shares)	18.3%
Individual members of the Milliken family	6.4%
Directors and employees of Deering, Milliken & Co.	2.9%
Others (more than 200 stockholders scattered over the United States)	31.0%
Total	100.0%

In 1956 the president of Darlington was Roger Milliken, who was also president of Deering Milliken. However, in the textile business the operating head of a manufacturing company normally bears the title of treasurer, with the president occupying a status analogous to that of chairman of the board in other industries. (R. 120, 388-90, 583). Darlington's by-

laws provided specifically that the president should "have general supervision over the affairs of the company" and "preside at all director's meetings," whereas the treasurer was given "charge of the books and of all financial and general business of the company under the supervision of the Directors" (not of the president), and he was made responsible for hiring, firing, fixing rates of compensation and keeping directors informed as to the affairs of the company. (R. 1130-31, 1281; see R. 1192). Darlington's treasurer was James M. Oeland, who held no position in Deering Milliken or in any other textile company. (R. 268-69).

Deering Milliken and members of the Milliken family also owned substantial stock interests, ranging from 55 to 88 per cent, in corporations operating twenty-seven other textile mills. (R. 470-71, 1309-10).

Since the Korean War the textile industry generally, and Darlington in particular, had faced constant and serious economic difficulties. (R. 53, 411-21, 461-64). By reason of technological changes Darlington was unable to continue the manufacture of certain grades of cloth that had been its traditional specialty in the print cloth field and that in the past had furnished a somewhat higher margin of gross profit than was furnished by the products of the more modern of Darlington's competitors. (R. 409-10, 444). Darlington's plant building was erected around 1888. (See R. 391). Some time in 1955 Darlington employed Barnes Textile Associates, Inc., an independent textile engineering firm, to make a survey of its operations with particular reference to such matters as plant efficiency, speed of equipment and cost reduction and to make

recommendations with respect to these matters. (R. 400-01). This report was submitted to Darlington in August 1955 and it findings established that Darlington was not competitive with other mills.[2]

While Darlington had attempted to meet its difficulties and had undertaken a program of modernization for its plant (R. 392-95), in January 1956 the directors had rejected a proposal to undertake urgently needed modernization (air conditioning of the plant) because of their uncertainty as to whether Darlington would be able to continue in business (R. 399-400, 461).

In late 1955 and 1956 Darlington's problems were intensified. Competition from Japanese imports increased the economic strain on Darlington. (R. 411-15).[3] Textile prices declined sharply and steadily throughout the first six months of 1956 (R. 60, 418-21), and a large number of mills were being forced to go out of business (R. 416-17).[4] In August 1956 the treasurer advised the president that Darlington would show a substantial loss for the year. (R. 61, 427, 443). Indeed, except for the years affected by World War II and the Korean War, Darlington had been a marginal operation for some time. (R. 391-

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[2] Among other things the report found that the weave room floor of the Darlington plant was so old that it could not withstand the vibration of modern high-speed looms. Hence Darlington planned to construct a concrete bed designed to take these looms on the ground level outside the existing plant building. (Tr. 720).

[3] Japanese cotton imports, in the form of woven goods and garments and in fabricated form, had continued to increase in 1955 and early 1956. (R. 458-59).

[4] In the twelve months preceding June 30, 1956, 400,000 spindles had been liquidated in the industry; this equalled approximately nine mills of Darlington's size.

92). For the period between 1952 and 1955 Darlington's earnings on the invested capital were:

1952	1.5%
1953	8.0%
1954	2.0%
1955	3.0%

One of Darlington's principal problems for some years had been the refusal of a minority of its working force to cooperate with management in instituting more efficient, economical methods of work assignments on modern equipment in order to reduce costs. The effectiveness of such a program depended upon the cooperation of Darlington's work force. The cost reductions to be achieved would to some degree result in a reduction in the number of jobs. The possible job reductions led a part of Darlington's work force to take an antagonistic position toward any modernization program. This was a matter that had given the management of Darlington considerable concern. (R. 401-09, 454-58, 481).

In March 1956 the Textile Workers Union of America began a campaign to organize Darlington's employees. (R. 51). At that time the employees were not represented by any union. The union campaigned primarily on its promise to the workers that it would prevent Darlington from carrying out the work assignments and procedures that the company believed necessary to reduce costs to the point where the plant could continue in business. (R. 422-23, 1275-80).

An election was held under the direction of the National Labor Relations Board on September 6, 1956, which was won by the union by a vote of 256 to 248. (R. 52). On the next day, Roger Milliken, who had

played no part in the unionization campaign, was advised of the result of the election by Oeland and Darlington's lawyer, Poag. Milliken and Poag conferred about the election in Milliken's office in Spartanburg. Oeland had previously informed Milliken of the minority of employees who were resisting the efforts of management to introduce more efficient methods. (R. 423). In answer to Milliken's question Poag said that election indicated that the minority had become a majority (R. 423), and Milliken

> "felt that as a result of the campaign that had been conducted and the promises and statements made in these letters that had been distributed, that if before we had had some hope, possible hope of achieving competitive course by taking advantage of new machinery that was being put in, that this hope had diminished as a result of the election because a majority of the employees had voted in favor of the union whose principal promise as I read it was that they would help the employees to see that they got control of work assignments, would take the stretch-out, so called, into their own hands, would stop it, would prevent management from going ahead with the work assignment changes." (R. 457; see the examiner's findings on this point, R. 56-57).

In consequence Milliken decided that the directors of Darlington should meet to review all the adverse economic factors and to determine whether it would be economically feasible for Darlington to remain in business. (R. 424-25, 469-77). He suggested such a meeting to some of the other directors, and they agreed. A meeting of the directors was held on September 12, 1956,

at which the total economic picture and prospects of Darlington were reviewed. As a result, the directors voted to recommend to the stockholders that the Darlington plant be closed, that the company undergo complete liquidation and that the assets be distributed among the shareholders. (R. 426-31). Before the stockholders' meeting was held, a general wage increase went into effect in the textile industry, which, if adhered to by Darlington, would have added $120,000 annually to Darlington's costs and thus increased its losses. (R. 470-73). A stockholders' meeting was held on October 17, and after discussion the stockholders voted to approve the recommendation of the board of directors. (R. 431-36). The vote was 134,911 shares in favor of liquidation (89.9 per cent) and 3,774 shares against. (R. 1265).

Thereafter, Darlington accepted no new orders for goods. It completed some of its existing orders, cancelled one and sold the others to other textile mills on an open-market basis. (R. 177). Beginning on October 18, as the raw materials on hand were utilized and the work ran out, employees were discharged and departments closed. All operations were terminated on November 24. (R. 53). The plant's equipment and furnishings were sold at auction on December 12 and 13; the plant was offered for sale as a whole but was sold piecemeal for a greater total amount. (R. 53, 258).

The examiner found that the liquidation of Darlington was bona fide and complete and did not represent a device or subterfuge by which any business was transferred to other textile mills in which the Milliken family had an interest. (R. 176-86). The record fully supports the findings of the examiner, and the

Board is bound by them.[5] Of the orders that Darlington could not fill because of the liquidation, some were sold to other mills in which the Milliken family had an interest and some to wholly unrelated mills; all were sold on an open-market basis with a premium or bonus to reflect price changes, and one order was transferred to a mill in which there was a Milliken interest only after an attempt to transfer it elsewhere had failed. (R. 177-78). The examiner said flatly: "There is no basis for concluding that the transfers favored other Deering Milliken mills. . . ." (R. 177). There was no evidence that following the liquidation the production and sales of other mills in which there was a Milliken interest rose on account of acquiring customers formerly served by Darlington. (R. 178).

On October 16, 1956, the union filed unfair labor practice charges against Darlington, and on November 1, 1956, it amended its charges to include Deering, Milliken & Co. (R. 1241). On December 4, 1956, a complaint issued against Darlington only. The Board's Regional Director declined to issue a complaint against Deering, Milliken & Co. Hearings were held before the trial examiner in January and February of 1957. On April 30, 1957, he filed an intermediate report. In it he recognized that Darling-

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[5] Petitioners now suggest that these findings were inaccurate. (NLRB Br. pp. 39-40; AFL-CIO Br. p. 13; TWUA Br. p. 16). In its decision, however, the Board adopted all the findings of the examiner not inconsistent with its opinion. (R. 4). There is nothing in the opinion of the Board that in any way qualifies or is inconsistent with the examiner's findings on this point. The court below put it this way: "No disagreement with this finding was, or on substantial evidence could have been, expressed by the Board." (R. 1900). The union did not seek certiorari on this question.

ton "had faced constant difficulties" since the Korean War. (R. 53). He found that "there was and for a long time had been economic basis for liquidating . . ." (R. 55), and he rested this finding on evidence relating to Darlington's economic and competitive problems some of which has been summarized at pp. 4-6, *supra*. (R. 53-67). He found, however, that Darlington's decision to liquidate was influenced in some measure by the union's successful campaign and that but for the election the decision to liquidate would not have been made at the time it was made. For that reason he concluded that the decision to liquidate violated Sections 8(a)(3) and (a)(5) of the National Labor Relations Act.

The examiner did not find, however, that Darlington's decision to liquidate was prompted in whole or in part by any intent to discourage union activity in any other mills in which either Deering Milliken or members of the Milliken family held stock interests.

Finally the examiner concluded that although there had been a violation of the Act there was no duty to reinstate the discharged workers and no back pay liability should be imposed because Darlington had completely and finally gone out of business and because "it has not been established with the certitude or definiteness which the law requires that, but for the discriminatory motive, the plant would still be in operation or that it would have continued in operation in whole or in part to a certain date after operations were in fact terminated." (R. 45).

The case was argued before the Board in September 1957. On December 16, 1957, the Board issued an order (with two members dissenting) that did not decide the issues presented but instead remanded the case

to the examiner for further hearings as to whether Darlington, Deering Milliken and other corporations together constituted a "single employer." (R. 87). (This is a concept developed by the Board to permit Board orders to be directed to a group of corporations (or one or more members of such a group) with which a corporation found to have committed an unfair labor practice has such a relationship—common ownership, control of labor relations and the like—that it is rational to treat all the corporations as one employer.) On February 3, 1958, a first amended complaint was issued, adding Roger Milliken and Deering Milliken as parties.[6] It was assumed by the examiner and by the parties "that the remanded question of single employer status has been presented in connection with the question of remedy rather than for possible finding of violation by other, if related, corporations." (R. 110; see also R. 512).

After many further procedural steps and delays not directly relevant here, the trial examiner on December 31, 1959, filed his third intermediate report, finding after an exhaustive analysis that no "single employer" status existed between Darlington and any other corporation or group of corporations or persons. (R. 101-231). Exceptions and briefs were filed with the Board. On January 9, 1961, the union moved to reopen the case on the ground of newly discovered evidence on the "single employer" question. On February 15, 1961,

[6] The Board eventually held, after many intervening procedural steps, that the complaint as to Roger Milliken should be dismissed. (R. 29-30). The union contests that holding before this Court. There is no merit to its challenge. The point, such as it is, is adequately treated in the Board's brief. (NLRB Br. pp. 48-49 n. 44).

the Board by a 3-2 vote remanded the case to the examiner for still further hearings.

Thereupon Deering Milliken brought an action in the United States District Court for the Middle District of North Carolina, in which it asked the court to restrain the Regional Director of the Board from holding additional proceedings on the ground that they would violate the requirement of Section 10(e) of the Administrative Procedure Act that agencies conduct their proceedings without unreasonable delay. The court granted such an injunction, which in principal part was affirmed by the Court of Appeals for the Fourth Circuit in *Deering Milliken, Inc.* v. *Johnston*, 295 F.2d 856 (4th Cir. 1961). That court held that the further proceedings contemplated would be "a violation of . . . the Board's duty to proceed with reasonable dispatch to conclude the proceedings." 295 F.2d at 867. The court did, however, permit one further limited remand. A short additional hearing was held, and on March 23, 1962, the examiner issued his second supplemental intermediate report again holding that no "single employer" status existed. (R. 232-46).

On October 18, 1962, the Board issued its decision. (R. 1-33). By a vote of 4 to 1, the Board held that the liquidation of Darlington was illegal even though it was deemed to be the complete and final liquidation of a single business, since even such a liquidation violates Section 8(a)(3) if it is motivated in part by considerations stemming from union success in a representation election. By a vote of 3 to 2, the Board awarded back pay to Darlington's former employees from the time of their discharge (six years previously) until Darlington should reopen and offer them employ-

ment, or until they could find employment elsewhere. By a vote of 3 to 2, the Board reversed the examiner and held that Darlington, Deering Milliken and the other mills in which the Milliken family had an interest constituted a "single employer."

The Board, utilizing the "single employer" theory, made Deering Milliken liable for back pay until it offered Darlington's discharged workers employment at other "Deering Milliken" mills. In a single, off-hand paragraph the Board also extended its "single employer" theory to reach liability as well as remedy by saying that even if it were true, as Darlington contended, that as a single, separate corporation it could go out of business regardless of its motives without committing an unfair labor practice, it could properly be considered a unit of the "single employer," and it is an unfair labor practice to close down part of a business because of anti-union motives. (R. 18).

On appeal, the Court of Appeals for the Fourth Circuit en banc reversed. It held, with two judges dissenting, that an employer may lawfully discontinue its business in whole or in part for any reason, so long as such discontinuance represents the complete, final and bona fide termination of a particular economic unit of enterprise. (R. 1894-1914). On this view of the case the court did not reach other questions: the appropriateness of the legal standards against which the Board judged whether Darlington was a "part" of a single employer; the lawfulness of its use of the single employer concept, not as a remedial device, but rather to create a violation where there otherwise would have been none; and the substantiality of the evidence that moved the Board to find a single employer relationship, in complete disagreement with its examiner, who had

heard and carefuly analyzed the mass of evidence that went to the question. Nor did the court decide whether the Board was correct in its holding that the decision to liquidate at the particular time in question was not prompted by business reasons.

SUMMARY OF ARGUMENT

I

Although the Board in this Court no longer attempts to defend its decision that Darlington, considered as a separate and distinct corporate entity, committed an unfair labor practice by liquidating itself and going out of business, the right of Darlington to go out of business remains the key to decision of this case. If a withdrawal from business is complete and final and does not represent a subterfuge for carrying on business in some other way or at some other place, it is immaterial whether the business is part or all of the employer's profit-making activity. Darlington's withdrawal was of this order, and therefore it did not commit an unfair labor practice by that withdrawal.

A. The relevant sections of the National Labor Relations Act regulate only "employers" and therefore do not reach the act by which an employer withdraws himself from that category. The statute does not define "employers" artificially to include former employers. Thus there is, contrary to the conclusion of the Board in its decision and the contention of the union in this Court, no literal violation of the pertinent subsections of Section 8 of the National Labor Relations Act. Moreover, an inquiry that goes beyond the words of Section 8 and into Congressional policy and purpose in labor relations regulation makes clear that the Board

in its decision and the union in its present argument are wrong.

In our society one has the right to choose, for any reason, whether to engage in business as an employer. When he does choose so to engage he gains the opportunity to operate at a profit and suffers whatever obligations may be imposed upon him by the Government, including the obligations of the National Labor Relations Act. These are conditions upon the activity of employing workers. One may avoid these obligations but only at the cost of forgoing the opportunity of making a profit. One has no obligation to become an employer and thus undertake the obligations, and likewise the statute imposes upon him no duty to remain an employer. Were the National Labor Relations Act to be construed as imposing such an obligation it would constitute an anomaly in our system of law.

B. The legislative history of the National Labor Relations Act discloses not the slightest intimation that Congress meant by that Act to abridge an employer's right to go out of business for any reason he chooses. Indeed, when the question was raised in the House whether there was anything in the bill that became the Wagner Act abridging the right to close a plant, the answer was a flat and unequivocal "no," and in the Senate a sponsor of the bill made clear that "no one can compel an employer to keep his factory open." 79 Cong. Rec. 7673, 9682 (1935).

C. Judicial opinions, including the opinion of this Court in *Southport Petroleum Co.* v. *NLRB,* 315 U. S. 100, 106 (1942), have proceeded on the same natural and unquestioned assumption that an employer does not commit an unfair labor practice by going out of business. The attempts to distinguish these cases,

notably *NLRB* v. *New Madrid Mfg. Co.*, 215 F.2d 908 (8th Cir. 1954), are not successful, and cases cited by petitioner for the proposition that a complete withdrawal from business may be an unfair labor practice are not in point.

D. Despite the Board's powers to fashion remedial orders that, in the case of a violation of Section 8(a)(3) of the Act, should restore "the situation, as nearly as possible, to that which would have obtained but for the illegal discrimination," *Phelps Dodge Corp.* v. *NLRB*, 313 U. S. 177, 194 (1941), the Board was enabled to issue a remedial order in this case that on its view satisfied the *Phelps Dodge* standard only because of the accident of Darlington's relationship to certain other textile corporations. The ordinary remedy of reinstatement and back pay was unavailable, and what could be ordered against Darlington alone was considered by the Board as "clearly inadequate." The fact that, with all its broad remedial powers, the Board thus found itself unable to provide redress for what it considered an unfair labor practice is indicative that the unfair labor practice does not exist.

II

Darlington was a marginal operation, with a loss projected for the year in which it liquidated itself. The advent of the union threatened to heighten Darlington's financial crisis. In these circumstances the Board was plainly wrong in holding that the decision to close the Darlington plant was motivated by reasons proscribed by the statute. As many courts of appeals have held, the advent of a union can be an economic circumstance that an employer is properly entitled to take into account in making business judgments. In-

deed, in the case of a step as drastic as liquidation of an entire business the presumption is overwhelming that if union activity played a part in the decision it was because of the demands reasonably to be expected from the union and the probable inability of the employer to satisfy those demands within the resources of his enterprise.

The Court of Appeals accepted, for the sake of argument, the Board's findings and its legal theory with respect to the factors that moved Darlington to liquidate itself. If this Court believes that, contrary to our view the Board's holding was not erroneous as a matter of law, the case must be returned to the Court of Appeals for a determination whether substantial evidence underlay its findings.

III

The Board's finding that Darlington and some other textile corporations and a sales agent and factor together constituted a "single employer" is erroneous as a matter of law and does not, in any event, justify treating the liquidation of Darlington and the closure of its plant as an unfair labor practice.

A. Even if the liquidation of Darlington is considered as the liquidation of a portion of the "Deering Milliken" textile business, such a partial liquidation, when it is complete and final and not a subterfuge for carrying on the business elsewhere or in a different form, is properly subject to the same standards as those applicable to a complete liquidation. The employer has withdrawn the capital invested in the part of business and has renounced *pro tanto* his opportunities for business success. No decided case is to the contrary; each involves a temporary shutdown, an arti-

ficial rearrangement of a business for anti-union reasons or some other factor that distinguishes it from Darlington's case. Moreover, despite the Board's "single employer" finding, it remains a fact that Darlington was a separate corporation with its own textile mill, and it is not properly analogized to a part or division of some single corporate entity.

B. Treated as a unit of a "single employer," Darlington could properly consider the economic impact of the advent of a union in deciding to liquidate just as it could if considered as a separate employer.

C. The Board's "single employer" doctrine has not been used before this case to impose a substantive liability where otherwise there would have been none. It has been solely a remedial device. That is at least a reason for demanding a greater unity of the entities thought to comprise the "single employer" than is customary in "single employer" cases, where the only question is whether it is fair, because of their relationship, to make corporation B redress a violation indubitably committed by corporation A. In any event, one of the elements of the "single employer" doctrine is substantial identity of ownership, and on the undisputed evidence that element is not, as a matter of law, present here. The so-called Milliken family, which the Board apparently viewed as binding the corporations together, consisted of 27 different individuals and an estate, who were not shown to act as a unit. Moreover, there were substantial minority, independent holdings in the corporations, including Darlington. On these facts the identity of ownership necessary to a finding of a "single employer" is absent.

* * * *

For one or more of the reasons stated, the Court should affirm the judgment of the Court of Appeals without reaching the question whether the Board's finding of "single employer" status is supported by substantial evidence. If, however, that question does have to be reached, the case should be returned to the Court of Appeals to make the initial review of the evidence that is contemplated by the statute. *NLRB* v. *Walton Mfg. Co.*, 369 U. S. 404 (1962); *NLRB* v. *Universal Camera Corp.*, 340 U. S. 474 (1951).

IV

If the statute is construed as the Board has construed it in issuing its order against Darlington in this case, grave constitutional questions are raised.

A. Congress' power under the Commerce Clause ends when the connection with interstate commerce of persons or things sought to be regulated terminates. The whole structure and the specific terms of the National Labor Relations Act demonstrate that Congress enacted it in full recognition of this limitation upon its power, and that it sought only to regulate the relationships of employer and employee so long as the employer was engaged in commerce or an industry affecting commerce. To construe the statute as providing sanctions against an employer's removing himself from the reach of the statute by quitting the category of employer would be to extend it not only beyond the intent of Congress, but also beyond Congress' power.

B. Were the Board's remedial order against Darlington allowed to stand, it would amount to a deprivation of property without due process of law in violation of the Fifth Amendment.

V

Even if a violation could be found based upon Darlington's liquidation, the union's proposal that Darlington be ordered to reconstitute itself and re-enter the textile milling business must be rejected as utterly without merit. Such an order would almost certainly be unconstitutional and would be punitive and utterly impracticable whether it was regarded as directed to the former shareholders of Darlington or to the other respondent, Deering Milliken. Any other question as to remedy that there may be after this Court disposes of the substantive issues in the case should be remitted to the Court of Appeals for its initial consideration; the Board does not disagree with this view. There are serious questions about the remedy the Board has prescribed. As it stands, the Board's order, which involves a massive award of back pay, is punitive as it applies to Darlington. This is the first case in which a back-pay liability extending beyond the date that a business was finally and completely liquidated has been imposed. The amount of the liability is impossible to ascertain, and Darlington, having liquidated, has no possible means of limiting its size. Further, Darlington had reason to rely in this case on the Board's long-established principle of tolling a back pay award from the date of a trial examiner's report favorable to an employer-respondent. The principle was abrogated after the intermediate report in this case and was abrogated with retrospective effect. This should not be permitted.

ARGUMENT

I

THE COURT OF APPEALS WAS CORRECT IN HOLDING THAT A COMPANY HAS AN UNQUALIFIED RIGHT PERMANENTLY AND IN GOOD FAITH TO GO OUT OF BUSINESS FOR ANY REASON.

Section 8(a)(3) of the National Labor Relations Act, 29 U.S.C. § 158(a)(3), makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." The National Labor Relations Board held in this case that under this section a company commits an unfair labor practice when it completely liquidates itself and goes out of business in good faith, if one of its contributing reasons for so doing is to avoid dealing with a labor union. "A [permanent] plant shutdown resulting in the discharge of employees that is partly due to employees' union activities constitutes an unfair labor practice." (R. 9).[7]

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[7] The Board contends in its brief that the liquidation of Darlington violated § 8(a)(1) as well as § 8(a)(3) (NLRB Br. pp. 2, 24, 30). For convenience our argument will be stated in terms of § 8(a)(3). The content of the argument, however, applies equally to § 8(a)(1).

The union, but not the Board, now contends that the liquidation also violated § 8(a)(5). (AFL-CIO Br. pp. 4-5). In its decision the Board held that the liquidation violated § 8(a)(5), but this holding was tied to the Board's conclusion that there had been a violation of § 8(a)(3). (R. 18). We believe that this holding does not raise any issues that are not covered in our analysis of the issues arising under § 8(a)(3).

The Court of Appeals rejected this contention. It held that a company has an unqualified right permanently to go out of business for any reason, including the desire to avoid dealing with a labor union. The Court's rationale was as follows:

> "To go out of business in toto, or to discontinue it in part, permanently at any time, we think was Darlington's absolute prerogative. The fundamental purpose of the National Labor Relations Act is to preserve and protect the rights of both industry and labor so long as they are in the relationship of employer and employee. . . . If a cessation of business is adopted to avoid labor relations, the proprietor pays the price of it: permanent dissolution of his business, in whole or in part. A statute authorizing an order forcing the continued pursuit of operations in these circumstances would be of doubtful validity. Consider the consequences of an attempt to punish as contempt a violation of such an order, and its fatal infirmity is revealed: the proprietor would be jailed or otherwise penalized for not reopening a demised business reinstating employees." (R. 1899).

In this Court the Board does not attempt to defend its holding that Darlington, considered as a single employer, committed an unfair labor practice by dissolving its corporate existence and completely liquidating its affairs. Instead the Board relies solely on the "independent" ground of decision, summarily stated in a single paragraph of its opinion, that the liquidation of Darlington was an unfair labor practice because it should be considered as a closing by an employer of one of several plants in reprisal for union activity.

The Board sought to support this ground of decision by reference to that part of its decision dealing with the question of remedy, in which it concluded that Darlington and certain other corporations, considered together, constituted a "single employer."

Although the Board thus attempts to avoid the question whether a corporate employer violates the Act if it dissolves itself and liquidates its operations, that question cannot be so easily evaded. The union at least recognizes that this is so by attempting to defend the Board on the principal ground of its decision. If an employer does not violate the statute by a complete withdrawal from business, then the question whether the employer owns one or several plants is significant only as it bears on the issue whether in fact there has been a final and complete withdrawal and not the adoption of a subterfuge that permits the business to be carried on in some other form or in some other place. If the withdrawal is complete and final and not such a subterfuge, then we submit that it is not an unfair labor practice whether prompted in whole or in part by animus toward a union; and the question whether the employer owns one or several plants is irrelevant.

In the present case the Examiner found that the liquidation of Darlington was final and complete, and that its business was not being carried on in any other form or in any other plant. These findings were affirmed by the Board and by the court below. With the issue of subterfuge thus removed, we submit that this case must ultimately turn on the question that the Board decided in its opinion but that it now declines to argue to this Court.

We shall therefore in the first instance direct this discussion to a proposition that has hitherto been as-

sumed without question, *i.e.*, that the National Labor Relations Act does not forbid an employer to go out of business totally and permanently and does not provide any sanction against an employer for doing so.

A. THE NATIONAL LABOR RELATIONS ACT DOES NOT BY ITS TERMS OR IN ITS POLICY REACH THE COMPLETE AND PERMANENT LIQUIDATION OF A BUSINESS.

In its opinion the Board held that the language of Section 8(a)(3) of the National Labor Relations Act "literally proscribes Darlington's closing of its business in retaliation for the employees' selection of the Union as their bargaining representative. . . . " (R. 16). It saw therefore an "uncomplicated, literal violation of § 8(a)(3)." (R. 10). The union repeats this contention in this Court.[8] (AFL-CIO Br. p. 4). There is no merit to it or to the union's parallel arguments concerning Sections 8(a)(1) and (a)(5).

Since the statute regulates only employers, it can have no application when a person or a business entity withdraws himself or itself from that status by going out of business; certainly the language of the statute does not "literally" apply to such a case. The statute does not define the term "employer" artificially to include persons who once were employers as well as present employers. The Board's only attempted answer in its opinion to this point was that, while the Act does not define an "employer" in any way helpful to its theory, it does provide that "the term 'employee' shall include . . . any individual whose work has ceased

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[8] In referring to contentions made in this Court, this brief will not ordinarily distinguish between the brief of the petitioner Textile Workers Union and that of the AFL-CIO as amicus, since the arguments in the two are designed as a single coordinated whole. We will ordinarily, in this context, refer simply to "the union."

. . . because of any unfair labor practice. . . ." § 2(3), 29 U. S. C. § 152(3). The Board concluded that "Darlington's discharged workers remained employees within the statutory definition. . . ." (R. 11).

We leave to one side the doubt that must arise as to whether the definition of "employee" assists very much in determining who can be the "employer" against whom the strictures of the statute run. The Board's reasoning is circular because its formulation simply begs the question. The issue to be resolved is whether the liquidation of Darlington, and the consequent discharge of its employees, constituted an unfair labor practice; if it did not, then the language of Section 2(3) is inapplicable. The attempt to posit a "literal" violation of the statute is thus logically unsound. More than that, however, the far-reaching issue that is at stake here is not to be resolved by a myopic scrutiny of the words of the statute, but rather with the assistance of an inquiry into Congressional purpose and fundamental policies underlying government regulation in general and the national labor law in particular. Such an inquiry makes plain that the Board in its opinion and the union in its argument here are wrong.

In its preoccupation with the possibility of economic injury to workers discharged because of a plant closing, the Board ignored the basic principle that in our society one has the right to choose, for any reasons sufficient to him, whether to engage in business as an employer. If an individual (or a corporation) chooses to commit his capital, do business and employ workers, he gains the possibility of operating at a profit and making money. The Government imposes various obligations upon him, among which are the obligations contained in the National Labor Relations Act.

These are conditions on being an employer, requirements contingent upon the activity of employing workers. If a businessman finds these obligations too onerous or otherwise not to his liking, he may avoid them, but only at the high price of removing himself from the category of those to whom the law applies by terminating his business and forgoing all the advantages and possibilities that engaging in business creates and perhaps suffering the opprobrium that attaches to one who has failed in business.[9] No one has an obligation to become an employer; neither the Board nor the union would, presumably, argue that an unfair labor practice is committed by one who contemplates entering a business but decides not to do so because of unwillingness to comply with the obligations imposed on employers by the National Labor Relations Act.[10] (This would, however, constitute a "literal" violation of the statute on the Board's reasoning.)

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[9] In his intermediate report the examiner observed:

"Whatever the factors which the Darlington stockholders weighed, corporations will not generally go out of business and liquidate their holdings to avoid dealing with a union. Where such steps are taken, financial loss will normally result and there will certainly follow the loss of profits and of that hope for future profits which motivated the enterprise. (If one thinks of motivation other than hope for profit, satisfaction of that motivation, whatever it be, will be denied as the business is liquidated.) If this does not line the pockets of those discriminated against, no more are they compensated when an employer is unable to pay; and it is not our broad social function to provide compensation and a remedy beyond the provisions of the Act. The fact remains that the situation here will hardly become common." (R. 99).

[10] In Associated Press v. NLRB, 301 U.S. 103, 132 (1937), this Court said:

"The Act does not compel the petitioner to employ anyone. . . ."

There is no reason in theory or in practice why the law should be different for one already an employer who chooses to withdraw from that status.

The Board's interpretation of the law would create an anomaly in the whole pattern of governmental regulation of various types of activity. Such regulation is in the nature of the imposition of conditions on engaging in the activity in question. That is the thrust of the declaration of policy found in Section 1(b) of the Taft-Hartley Act, 29 U.S.C. § 141(b), from which the union seeks, through verbalisms, to draw support for its position (AFL-CIO Br. pp. 5-6).[11] The declaration states it to be the Congressional purpose and policy "to prescribe the legitimate rights of both employees and employers in their relations affecting commerce. . . ." This necessarily means that there are correlative duties imposed on the parties to the employer-employee relationship—conditions, as we have said, upon the undertaking to be an employer (or employee). There is nothing in the statement of policy or elsewhere in the statute that purports to impose an obligation to enter into the relationship or remain in it. Except perhaps in the plainly distinguishable case of some public utility regulation, nowhere in the entire body of our law does there exist a type of governmental regulation that not only imposes conditions on engaging in a particular activity but in addition requires the activity to be engaged in

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[11] The union refers to the statutory purpose of promoting the full production of articles and commodities for commerce and the full flow of commerce, and asserts that this purpose will not be promoted by permitting employers to shut down their plants for allegedly forbidden reasons. Nor will that purpose be promoted by any plant shutdown, but the statute clearly does not reach all business liquidations.

or, once undertaken, to be continued, in order that the regulation may have as wide an application as possible.

If a lawyer or a doctor finds intolerable or even uncongenial the obligations imposed on him by law in the pursuit of his profession, no one questions his right to cease his practice in order to avoid them. If ordinances impose restrictions on the uses to which real property can be put, then it is axiomatic that a landowner may escape those restrictions by selling his property to someone else. If a liquor dealer finds it offensive to be compelled to collect a liquor tax when he sells his products, he may avoid that obligation by going out of business. A restaurant that considers municipal health or fire regulations vexatious may escape them, insofar as they apply only to restaurants, by withdrawing itself from that category and turning to some other business. As yet unquestioned is the right of an individual to avoid income taxes by ceasing to earn taxable income.[12] It may be predicted with some confidence that, if and when the issue reaches the courts, a proprietor of a place of public accommodation will not be held to have violated the Civil Rights Act of 1964 if he chooses to abandon his business completely rather than to comply with the obligation to serve all persons without discrimination.[13]

Such analogies could be multiplied, indeed from

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[12] During the argument of the present case before the Board in September 1957, Member Murdock (who was no longer a Board member by the time of the final decision) drew this analogy to the right of an employer to go out of business.

[13] The Court of Appeals of Maryland recently said of that state's public accommodations law: "The duty not to discriminate which the legislature has imposed upon restaurants such as the one which the appellant owns is a condition of his carrying on that business, not a requirement that he stay in it. . . . [I]f the appellant feels

every area where specific types of private activity are regulated by Government. The right to abstain from a private, regulated activity in order to free oneself from the regulation thereof is simply one of the fundamental rights of free men in a free society, and we know of no case prior to this one where abridgment of that right has even been suggested.

It is true that in legislation regulating public utilities there is sometimes a requirement that regulatory approval be had before service is abandoned.[14] Control of abandonment of service is a concomitant of the limitation of entry and the consequent monopoly or semi-monopoly position that a licensed utility enjoys under the law. Moreover, even with respect to public utilities the control over discontinuance of business is not absolute. For example, a state may not, consistently with the Fourteenth Amendment, prevent a utility from discontinuing its business when the business is being conducted at a loss. *Brooks-Scanlon Co.* v. *Railroad Comm'n,* 251 U.S. 376 (1920) (Holmes, J.); see also *Phillips* v. *Nelson,* 108 F.2d 725 (10th Cir. 1939).

In the ordinary case of a private business not affected with a public interest, and in the particular case of this marginal textile mill, abridgment of the right to withdraw from an activity serves no useful purpose in effectuating the policies that governmental regulation seeks to achieve. The National Labor Relations Act was not designed to compel persons to become or remain employers; it was designed to insure

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the condition too onerous, he is under no obligation to continue in an occupation lawfully regulated in the public interest." Barnes v. Maryland ex rel. Pinckney, No. 163, Md. Ct. App., Nov. 17, 1964.

[14] *E.g.*, Federal Aviation Act § 401(j), 49 U.S.C. § 1371(j); Interstate Commerce Act § 1(18), 49 U.S.C. § 1(18).

that those who choose to become and remain employers act in accordance with certain obligations in dealing with their employees.

B. THE LEGISLATIVE HISTORY SHOWS THAT CONGRESS DID NOT INTEND TO RESTRICT A COMPANY'S RIGHT TO GO OUT OF BUSINESS.

Clear and unequivocal evidence that Congress intended that an extraordinary restraint be placed upon the usual privilege of anyone to go out of business is the minimum that would be required to authorize the Board to construe the statute as imposing such a restraint. No hint of any such Congressional intent is to be found in the legislative history of the National Labor Relations Act. In all the many hundreds of pages of hearings, reports and debate that preceded the enactment first of the Wagner Act and twelve years later of the Taft-Hartley amendments, there is not the slightest intimation that Congress or any member of Congress understood or intended that any provision of the Act could have the result of abridging an employer's right to go out of business at any time and for any reason he chose.

Not only is there a complete want of evidence that Congress did so intend, but also there is affirmative, unambiguous evidence that it did not. At one point during the debate in the House on the bill that became the Wagner Act, Representative Griswold of Indiana, a ranking Democratic member of the Labor Committee, which had reported the bill, was asked by Representative Taylor of Tennessee, "Is there anything in this bill to prevent an operator from closing his plant?" He answered unequivocally: "There is nothing in the bill to keep an operator from closing his plant." 79 Cong. Rec. 9682 (1935).

Senator Walsh, Chairman of the Senate Committee

on Education and Labor and a principal sponsor of the bill, made the following declaration as to "fundamental rights" that remained untouched by the legislation:

> "Mr. President, there are some *fundamental rights* an employer has, just as there are rights an employee has. *No one can compel an employer to keep his factory open.* No one can compel an employer to pay any particular wage. No one can compel an employer to hire others in additional to those he sees fit to hire. So with an employee; no one can compel him to work, no one can compel him to go on strike, no one can compel him to leave his work.
>
> *"No one can keep an employer from closing down his factory and putting thousands of men and women on the street.* So in dealing with this bill we have to recognize those *fundamental things,* and we have not gone into that domain. All we do is to remove the barriers that have kept employees away from their employers, which have prevented collective bargaining, which have resulted in strikes without any attempt to negotiate. All we have done is to promote the orderly processes of collective bargaining." 79 Cong. Rec. 7673 (1935). (Emphasis added).

On two occasions during the Senate Committee hearings that preceded passage of the Wagner Act, employers testified that, if the legislation were enacted and they were compelled to deal with labor unions, they (or others) would go out of business rather than incur that burden. If anyone on the committee had believed that a cessation of business for that reason would itself be an unfair labor practice under the statute, he

would naturally have so stated at that point. In neither case did any senator give such an indication. *Hearings Before the Senate Committee on Education and Labor on S. 2926,* 73d Cong., 2d Sess. 414-15, 665 (1934).

This legislative history is compelling both in what it says and in what it does not say. The question of permanent plant closings was one of which Congress was well aware, and on several occasions both congressmen and witnesses referred to the right of employers to close their plants as an axiomatic one which was untouched by the bill and which might be exercised to avoid the consequences of the bill. It never occurred to anyone, other than Representative Taylor, that the bill might be construed to interfere with or abridge an employer's right to go out of business. And when Representative Taylor raised that possibility, the suggestion was instantly and flatly repudiated by one of the sponsors of the bill.

C. THE DECIDED CASES SUPPORT THE VIEW OF THE COURT OF APPEALS THAT THE NATIONAL LABOR RELATIONS ACT DOES NOT RESTRICT AN EMPLOYER'S RIGHT TO GO OUT OF BUSINESS.

The Board's holding that an employer commits an unfair labor practice in some circumstances by going out of business is without support in judicial precedent. The Board has conceded as much. It said in its opinion that "there is no decided case directly dispositive of Darlington's claim that it had an absolute right to close its mill, irrespective of motive." (R. 15). Such judicial consideration of the subject as does exist is similar to the legislative history in that it assumes the right as one beyond question.

This Court has indicated that such an assumption is proper. In *Southport Petroleum Co.* v. *NLRB,*

315 U.S. 100 (1942), the Board had ordered reinstatement of certain employees found to have been discriminatorily discharged. The company offered to prove that after the issuance of the order it had gone out of business. The Court rejected the offer as not comprehensive enough to show whether the cessation of business had been complete and bona fide but made clear that such a cessation would be sufficient to eliminate the liability. The Court said:

> "Implicit in the reinstatement provision of the Board's order was a condition of the continued operation by the offending employer of the refinery to the employment of which the illegally discharged employees were to be restored. Such operation might have continued under the old business form or under a disguise intended to evade this provision. * * * Whether there was a bona fide discontinuance and a true change of ownership—*which would terminate the duty of reinstatement created by the Board's order*—or merely a disguised continuance of the old employer, does not clearly appear, ..." *Id.* at 106. (Emphasis added.)

In the Court's view, then, the question was not the company's motive in going out of business, but whether it really had gone out of business. This, to be sure, was a compliance case, but there was no suggestion that the cessation of business could itself be an unfair labor practice if motivated by a desire on the part of the company to avoid its obligations to its workers under the law, although the whole atmosphere of the case and the opinions strongly suggested that such a motive was present. And since the Court expressly held that

dissolution terminates the duty to comply with Board orders based on prior unfair labor practices, implicit in the decision was the Court's view that dissolution, however motivated, removes an employer from the ambit of the statute altogether, or at least from the impact of remedial orders thereunder. The cases in the lower federal courts are to the same effect. *NLRB* v. *Grace Co.*, 184 F.2d 126, 130 (8th Cir. 1950); *NLRB* v. *Caroline Mills, Inc.*, 167 F.2d 212, 214 (5th Cir. 1948); *NLRB* v. *Tupelo Garment Co.*, 122 F.2d 603, 606 (5th Cir. 1941); *Atlas Underwear Co.* v. *NLRB*, 116 F.2d 1020, 1023 (6th Cir. 1941); *Phillips* v. *Burlington Industries, Inc.*, 199 F. Supp. 589, 591 (N.D. Ga. 1961).

In the present case the Board has taken pains in its opinion and now in its brief to attempt to distinguish *NLRB* v. *New Madrid Mfg. Co.*, 215 F.2d 908 (8th Cir. 1954). There the court declared:

> "But none of this can be taken to mean that an employer does not have the absolute right, at all times, to permanently close and go out of business, or to actually dispose of his business to another, for whatever reason he may choose, whether union animosity or anything else, and without his being thereby left subject to a remedial liability under the Labor Management Relations Act for such unfair labor practices as he may have committed in the enterprise, except up to the time that such actual and permanent closing or true and bona fide change in ownership has occurred. No one can be required to stay in private business, and no one can be prevented from permanently closing or abdicatingly selling such a business. . . . *Cf. Southport Petroleum Co.* v. *N. L. R. B.*, 315 U.S.

> 100, 106. No more, in our opinion, can the Act be said to contain any basis to assess remedial back-pay against such a person, beyond the date of his permanent closing or abidicating sale of the enterprise." *Id.* at 914.

The Board argues improbably (R. 14-15; NLRB Br. p. 37) that the language just quoted was contradicted by the court's actual holding. This is not so. The court did agree with the Board in its finding that a temporary shutdown of a plant, prior to the permanent going out of business, was an unfair labor practice. *Id.* at 912. The court made the statements we have quoted in holding that a subsequent permanent closing prevented any relief against New Madrid for the temporary shutdown other than back pay up to the time of the permanent closing. *Id.* at 915.[15]

A temporary shutdown was also what was involved in the one court case that the union cites for the proposition that "it is an unfair labor practice for an employer to shut down . . . his entire operation." (AFL-CIO Br. pp. 6-7). The case is *NLRB* v. *Norma Mining Corp.*, 206 F.2d 38 (4th Cir. 1953), decided by the same court that rendered the decision on review here, and relied upon also by the Board in its opinion. (R. 15-16).[16] Of course, a temporary shutdown, which may fairly be equated with the traditionally anathematic lockout, may constitute an unfair labor practice, but

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[15] Thus the holding was in square conflict with the Board's order in the present case, which awarded back pay beyond the time of the permanent closing.

[16] Both the majority and dissenting judges in the Court of Appeals distinguished *Norma Mining Corp.* as involving a temporary shutdown. (R. 1899, 1910).

it is a very different thing from a complete, good faith, permanent liquidation of a business.

The other cases cited for the view that it may be an unfair labor practice to go out of business similarly involved a temporary rather than a permanent shutdown, a runaway plant or some other kind of "disguised discontinuance" that did not affect the operation of an entire plant or the continuance of the business itself. They are treated in Part III of this argument, where we address ourselves to the Board's proposition that what may have been lawful if undertaken by Darlington alone was unlawful by reason of Darlington's relationship to some other textile corporations. The crucial difference between all these types of cases and the present situation is that in those cases the employer was attempting to have its cake and eat it too: to avoid dealing with the union while at the same time continuing its business and preserving the opportunity to make a profit therefrom. In none of these cases had the employer decided to accept the ultimate consequence of its unwillingness to deal with a labor union, that is, the cessation of its economically profitable activities altogether. The inability of the Board to recognize this crucial distinction—to appreciate that the progression from a temporary shutdown or a plant transfer to a permanent discontinuance of business is not merely another step or a difference in degree but presents a qualitatively different situation altogether—is a fundamental error.

A similar manifestation of inability to draw legally relevant distinctions is found in the Board's simplistic argument that, since threats to close a plant constitute an unfair labor practice, the actual closing must likewise be illegal because it would be irrational to pro-

scribe threats to take action that is not itself proscribed. (Br. pp. 31-32). An answer to this argument lies in the statutory scheme itself since such threats made prior to an election may well have a coercive effect on a continuing employer-employee relationship, while a complete and permanent liquidation of and withdrawal from business cannot. See *Atlas Underwear Co.* v. *NLRB*, 116 F.2d 1020, 1023 (6th Cir. 1941).

The Board itself has recognized that a threat made during the course of an election campaign may have unlawful coercive effects even though the act threatened does not violate the statute. The Board has ruled, for example, that a party does not violate the Act by resorting to the courts for an injunction, even if its motive was to interfere with employees' statutory rights, but that a threat to institute a lawsuit can be violative of Section 8(a)(1), *Clyde Taylor Co.*, 127 N.L.R.B. 103 (1960). The Board has commonly taken the position that in organizing drives anticipatory statements by an employer of his position with respect to various bargaining matters may constitute unlawful interference, even though subsequent adherence to those positions is perfectly proper. It has thus found unlawful interference in an employer's announcement to employees in an election campaign that he would not bargain with a union because its majority status was predicated upon an inappropriate unit, *Lord Baltimore Press*, 142 N.L.R.B. 328 (1963),[17] and that he would, if the union won an election, no longer con-

[17] Indeed, the distinction between threats and their effectuation is highlighted by the *Lord Baltimore* decision, where the Board, without rejecting the employer's legal position, announced that "we can only view this kind of statement of legal position as a threat. . . ." 142 N.L.R.B. at 329.

tinue certain benefits, *James Hotel Co.*, 142 N.L.R.B. 761 (1963). In these situations it is clear that the employer had the legal right subsequent to the election to carry out the actions threatened.

D. THE ABSENCE OF A PERMISSIBLE REMEDY RATIONALLY RELATED TO THE SUPPOSED VIOLATION DEMONSTRATES THE ERROR OF THE BOARD'S CONSTRUCTION OF THE STATUTE.

In the case of a violation of Section 8(a)(3) the purpose of a Board order is to restore "the situation, as nearly as possible, to that which would have obtained but for the illegal discrimination." *Phelps Dodge Corp.* v. *NLRB*, 313 U.S. 177, 194 (1941). The Board was enabled in this case to fashion a remedy it considered adequate by that standard only by a factor that so far as the problem now under discussion is concerned—whether an employer has the right to liquidate a business for whatever reason may move him—was wholly fortuitous.

The Board found itself in a dilemma:

> "The unusual circumstances of this case . . . have made it more than ordinarily difficult to decide on the period that the back-pay award should cover. The Darlington plant has been closed and there is no immediate prospect that it will be reopened. The Board's remedy of reinstatement with back pay to run until such time as reinstatement has occurred, which is the Board's customary remedy where an employer has discriminatorily discharged his employees, is thus wholly impractical where the closed plant only is taken into consideration." (R. 22).

The Board therefore ordered Darlington "to provide back pay until the discharged employees are able to obtain substantially equivalent employment" (R. 22), although it considered that "this limited redress for the unfair labor practices found is clearly inadequate." (R. 23). The Board believed that it was saved from this inadequacy by its discovery that other corporations together with Darlington formed a "single employer" and its conclusion that these other corporations could therefore be ordered to offer employment to Darlington's former workers.

If there had been no related corporations, however, even though on the Board's view the liquidation of Darlington would equally have constituted an unfair labor practice, by the Board's own admission the only remedy would have been "clearly inadequate." Given the scope of the Board's remedial powers, this admitted inability to find an adequate remedy for the unfair labor practice thought to be committed by a corporation in liquidating itself casts the gravest doubt on the soundness of the Board's conclusion that there is such an unfair labor practice.

To carry the matter a step further: on the Board's theory that Darlington's liquidation constituted an unfair labor practice, obviously the most effective remedy to eradicate the consequences of that conduct would be (in addition to a back-pay order) a requirement that Darlington be reconstituted and reopen a textile plant in the City of Darlington. Yet the Board never even considered ordering this, and for good reason: a requirement that individuals invest their capital in a certain enterprise and enter into a particular business at a specified location, even if they had previously been so engaged, is so extreme and

impractical and raises such grave constitutional problems that it is unlikely that any court would sustain it.[18]

In its purely financial impact the back-pay order that the Board did issue, which would entail payments that could easily amount to several million dollars,[19] would be far more onerous than the reconstitution of Darlington, which had a capital value, based on stock prices, of only some $2,100,000 in 1956. (R. 437, 439).[20] But in terms of its unprecedented coercive impact on the right of persons and companies to engage or not to engage in business as they choose, the shock of an order requiring reconstitution of the business is much greater. If the Board's decision in the present case were allowed to stand, it would have to be applied in cases where there were no even arguably "affiliated" corporations still in existence to assume the burden of offering jobs to discharged employees. In such cases the Board would be faced with the choice either of ordering reconstitution of the business or of contenting itself with a remedy that by its own admission is "clearly inadequate." The Board's solution in the present case is simply an attempt to disguise the fact that, on analysis, an order that a dissolved business be reconstituted is no more drastic or shocking than a holding that that business violated the law by its dissolution. Our legal system has no place for either.

Another factor, involving both the holding of illegality and the remedy, underlines the unsoundness

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[18] See pp. 74-76, *infra*.

[19] See p. 77, *infra*.

[20] Total assets minus liabilities were $3,760,000. (R. 441).

of the Board's result. The liquidation of a business is not, and was not in this case, the act of the corporation itself; it is the act of the shareholders. A company cannot logically be held liable for its own dissolution. So long as a corporation is in existence, it can act only through its agents; there are therefore persons—usually its officers—for whose acts the corporation is legally answerable. But the fundamental acts of bringing a corporation into being and dissolving it are not the acts of the corporate body, but of the shareholders.[21]

Even if the corporation could be held liable for this act of its shareholders, absurdities become apparent when it is remembered that the Board's test of legality is one of motive. Must each shareholder be examined as to what his motive was? Suppose it appears that different shareholders voted as they did for different reasons or different combinations of reasons. If a majority voted for liquidation, but only a minority

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[21] The Board may suggest, as it did below in an argument addressed to a somewhat different point, that Darlington in any event committed unfair labor practices because it discharged its workers not all in one day, but gradually over a period of several weeks; only the discharges on the last day of production, the Board held, partook of the nature of a liquidation of the business. (R. 11, n. 22). This argument ignores the patent fact that the discharges, though periodic, were all made pursuant to a plan and decision to liquidate. To make the result turn on whether the company completed its liquidation in the course of a single day or not would be a triumph of form over substance. As in Mount Hope Finishing Co. v. NLRB, 211 F.2d 365, 372 (4th Cir. 1954), "the charge that the Company locked out and discharged its employees in order to evade its obligation to bargain with the union is merely incidental to the charge that the plant was closed for this purpose and falls for the same reason."

(though a majority within the majority) were found to have acted from anti-union motives, would the "corporation's" act therefore be illegal? And since the impact of any remedial order issued by the Board falls on the shareholders, should not only those shareholders who voted for the dissolution be penalized? And what of those shareholders who may establish that, while they voted for the dissolution, they did so for non-discriminatory motives? One of the many insidious results of the Board's decision is that a shareholder may find himself penalized, his capital destroyed, neither because of his own acts nor even his own motives, nor because of the acts of his company's authorized representatives or of his fellow shareholders, but rather because of what the Board concludes were the *motives* of his fellow shareholders.

These difficulties cannot be ignored simply because in the present case the Board chose to confine its attention to a particular group of stockholders which it described as "the Milliken family." If a company can really violate the law because its shareholders decide on its dissolution, these problems will some day have to be faced; the difficulty of resolving them logically and equitably should at least make the Court hesitate before adopting the Board's position. Indeed, even in the present case there are minority shareholders, including some who voted against the dissolution, whom the Board would penalize equally with those whose motives it views as rendering the dissolution illegal.

II

THE BOARD ERRED AS A MATTER OF LAW IN HOLDING THAT DARLINGTON WENT OUT OF BUSINESS FOR DISCRIMINATORY RATHER THAN ECONOMIC MOTIVES.

In holding that Darlington committeed an unfair labor practice by liquidating itself the Board drew a distinction between economic or business reasons for management decisions that are unrelated to labor unions, on the one hand, and, on the other, economic and business reasons that in some way are related to the presence or conduct of labor unions. The Board held that any business decision involving the discharge of workers that is based in part on reasons in the second category is illegal. The distinction and the holding have no warrant in the statute.

Darlington contended before the Board that there were legitimate economic reasons for its liquidation and that these were acted upon. There is no doubt that if that was the case Darlington committed no unfair labor practice by liquidating.[22] Darlington's argument was based on the following facts of record, which are not challenged by the Board.

A number of economic factors, existing prior to and unrelated to the unionization campaign, created grave and increasing doubt whether Darlington could continue to operate as a viable concern. (R. 411-21, 461-64). About a month before the union election, Darlington learned that during the then-current year the company's books would show a substantial deficit for the first time since the 1930's. (R. 427, 443). Thus at

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[22] *E.g.*, NLRB v. New England Web, Inc., 309 F.2d 696 (1st Cir. 1962).

the time the union appeared on the scene Darlington was at best a marginal operation; any increase in costs would make it impractical for it to continue to do business, and before the arrival of the union the directors had considered the possible necessity of liquidation for business reasons. (R. 461). The examiner recognized that "the factors cited were sufficient to support a decision to terminate operations; certainly it cannot be said that such a decision could not reasonably, or even unreasonably but credibly, be based on those factors." (R. 65).

One of Darlington's principal problems for several years had been to obtain cooperation from its workers in instituting more modern and economical methods of work assignment. This program had met with resistance from some of the employees, which had given the management considerable concern. (R. 402-09, 481). The union campaigned primarily on its promise that it would prevent the company from carrying out the work assignments and procedures it believed necessary, and the company reasonably concluded that the advent of the union would seriously impede its work-assignment program. (R. 422-23, 1275-80). The success of the union's representation campaign, following hard on the heels of the discovery that Darlington would incur substantial losses in that year, caused the management to review Darlington's total economic picture and prospects. (R. 267, 423-28, 457-58, 469, 474-77). This review led to the conclusion that in view of all the adverse economic factors, including majority support of a union pledged to impede the company's work-assignment program and to obtain higher wages, Darlington could no longer continue to operate profitably. (R. 254, 263, 267, 291-92, 464, 469-70). The

recommendation of the directors and the decision of the shareholders was therefore to liquidate. (R. 429-30).[22]

The Board's answer to all this was that Darlington's pre-existing economic plight was irrelevant because it appeared that the decision to liquidate would not have been reached at that particular time "but for" the victory of the union. (R. 8). It continued,

> "Moreover, even assuming, as the Respondent contends, that the 6 genuine economic factors as well as the employees' union activities were responsible for the closing of the mill, Darlington's action was no less unlawful. A plant shutdown resulting in the discharge of employees that is partly due to employees' union activities constitutes an unfair labor practice." (R. 9).

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[22] Petitioners attach great importance (see, *e.g.*, NLRB Br. p. 8) to the testimony of one witness that Roger Milliken, when asked why the mill would remain closed when 83% of the workers had signed a petition asking to go back to work with or without a union, declared, "as long as there was 17% of these hard-core labor people here, I refuse to run the mill." (R. 268). In fact this statement, if made, actually refutes the theory that Darlington was closed because of management's unwillingness to deal with the union. If only 17% of the workers adhered to the union, the union stood ultimately to lose its certification and the company would be under no obligation to deal with it. Yet, according to this testimony, Roger Milliken was unwilling to keep the plant open even though freed of the union. The testimony, therefore, supports the conclusion that Milliken's reason for proposing liquidation was not opposition to the union as such, but rather his belief that the plant could not be operated profitably if any substantial portion of the labor force was unwilling to cooperate with the work assignment program.

Thus the Board held that there is no such thing as an "economic" reason for liquidation that is related to union activities—that a company has no right to conclude from all the circumstances, including the conduct and the promises of the particular union in question, that the certification of that union is bound to result in union demands or action that would intolerably raise the company's costs or cause a crippling strike. In the Board's words, "When an employer discharges its employees [by liquidating its business] for selecting a union to represent them, the motivation is not 'economic' in the sense contemplated by the Act—notwithstanding the employer's belief that it could not afford to pay increased wages that the union representative might demand." (R. 8).

These views of the Board cannot be sustained under the Act. The advent of a union can in certain circumstances be an "economic" factor that may form the basis, particularly when combined with other factors, for a corporate decision that would not violate the Act even were the decision not one protected by a company's absolute right to go out of business for any reason it chooses. The Court of Appeals for the First Circuit has so held in *NLRB* v. *New England Web, Inc.*, 309 F.2d 696, 701 (1st Cir. 1962). In reversing a Board decision that the termination of a business in the face of unionization was an unfair labor practice, the court said, "assuredly among those factors which would induce a 'legitimate' business judgment to close operations, few can exceed financial distress," and "certainly the company could reasonably expect the advent of the union to affect its already precarious cost picture."

The very recent case of *NLRB* v. *Neiderman*, 334

F.2d 601 (2d Cir. 1964), is also illustrative of the point. There the court affirmed the Board's finding that the employer had committed unfair labor practices in the course of a union representation campaign. About three weeks after the employer learned that a majority of the employees had joined the union, the company determined to cease operations and dissolve itself. The court reversed the Board's holding that the dissolution violated Section 8(a)(3) of the Act. Without reaching the question whether a company has an absolute right to go out of business, the court held that the dissolution of the business was "primarily predicated on valid economic considerations" and thus was lawful. 334 F.2d at 604. The sole economic reason involved was the company's unwillingness or inability to pay increased wages which it had been informed were those customarily demanded by the union.

The courts of appeals have uniformly held that in deciding on such steps as plant transfers and the elimination of auxiliary departments—not involving the right to close down a business—an employer may consider the anticipated economic consequences of unionization, either alone or together with other economic factors. *NLRB* v. *Kingsford,* 313 F.2d 826 (6th Cir. 1963); *NLRB* v. *Rapid Bindery, Inc.,* 293 F.2d 170 (2d Cir. 1961); *Jays Foods, Inc.* v. *NLRB,* 292 F.2d 317 (7th Cir. 1961); *NLRB* v. *Lassing,* 284 F.2d 781 (6th Cir. 1960); *cert. denied,* 366 U.S. 909 (1961); *NLRB* v. *R. C. Mahon Co.,* 269 F.2d 44 (6th Cir. 1959); *NLRB* v. *Adkins Transfer Co.,* 226 F.2d 324 (6th Cir. 1955); *NLRB* v. *Houston Chronicle Pub. Co.,* 211 F.2d 848 (5th Cir. 1954); *Mount Hope Finishing Co.* v. *NLRB,* 211 F.2d 365 (4th Cir. 1954).

These decisions are thoroughly consonant with the Act. The reasonably expected consequences of the presence of a specific labor union as evidenced by its demands, its past performance or promises made by it to the workers, are economic facts which any responsible employer should and would consider in reaching basic management decisions. "The Board's position appears to be that a move by management when that move is required for sound business reasons is nevertheless an unfair labor practice if the move is accelerated or reinforced by contemporaneous difference with a union. This position is not supported by the language of the Act or by the decisional law interpreting that language." *NLRB* v. *Rapid Bindery, Inc.*, 293 F.2d 170. 174 (2d Cir. 1961).

Petitioners attempt to distinguish decisions cited and discussed above on the ground that in those cases the courts had found that the discontinuances were motivated by other factors than anti-union reasons. This is a mere semantic distinction. What the Board characterizes as an unlawful and anti-union motive in this case was precisely the motive that was present in these other cases, *i.e.*, a recognition that in an enterprise already beset by economic difficulties the problem of reducing costs was predictably aggravated by the advent of a union committed to a program of demands for higher wages and less flexible job assignments.

Even if the subjective motivation for a decision to withdraw from business can ever be a proper basis for determining whether an unfair labor practice has been committed, the Board is wholly unrealistic when it draws a rigid dividing line between economic or business reasons on the one hand and reasons con-

nected with labor unions on the other, and holds, as it expressly did in this case, that a management decision is tainted by illegal anti-unionism if it is in any degree influenced by consideration of the activities, threats, promises or demands of a union as an economic factor.

There is no sound reason flowing from the national labor policy why an employer should be compelled to ignore these important parts of the total business picture in reaching crucial management decisions. The rule as to motive announced and applied by the Board in this case is so wholly subjective and so susceptible to manipulation by verbalisms that its application and enforcement would give rise to serious practical problems. A rule of this character would inevitably have the effect of penalizing those who are candid and forthright and advantaging those who are devious and disingenuous. Such results are always threatened when subjective motivation is unduly exalted as the basis for holding identical objective acts legal or illegal. The danger is particularly acute when, as here, the motive proscribed is a legitimate one that businessmen cannot reasonably be expected to eschew.

These considerations, which apply to such decisions as plant removals or the discontinuance of auxiliary departments, are especially forceful when the complete and permanent liquidation of a business is in question. It would be a quixotic employer who found the presence of a labor union, entirely apart from its reasonably anticipated economic effects, so personally offensive on moral, aesthetic or other grounds that he would rather close down his business altogether than tolerate it. When the liquidation of a business is based in any part on the advent of a labor union, as a matter of

common sense the presumption is overwhelming that it was the actual or reasonably anticipated economic consequences of unionization, rather than mere vindictiveness, which was decisive. The proof shows that such was the case here.[24] In this connection it is significant that although Darlington attempted to sell its operation as a whole it developed that a larger price could be obtained by selling the plant and equipment piecemeal. This circumstance strongly suggests that prospective purchasers regarded the advent of the union as a relevant economic consideration.

The Board's holding that Section 8(a)(3) is violated by any consideration of the presence of a labor union as a factor in a decision to liquidate must be rejected. The decision of the Court of Appeals therefore should be affirmed even if this Court holds that a decision to liquidate is not an unqualified prerogative of an employer. However, if the Court believes that the question whether Darlington's action was legal involves issues of fact concerning the relative importance of the various motives that were present, then the Court should remand the case to the Court of Appeals with a direction to apply to the facts the legal standards indicated in this section of the argument.

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[24] Certainly, at a minimum, a decision so drastic in its effect on the employer as a decision to liquidate is in the category of "conduct which on its face appears to serve legitimate business ends," i.e., would not be engaged in were it not for a compelling business reason, and which therefore can only be found to be an unfair labor practice upon a "showing of an intent to encroach upon protected rights." NLRB v. Erie Resistor Corp., 373 U.S. 221, 228 (1963). A liquidation and withdrawal from business is of a different order from the device of giving striker replacements superseniority in a continuing business. It was the latter practice that was involved in the *Erie Resistor* case and which the Court thought had an "inherently discriminatory or destructive nature. . . ." *Ibid.*

The Court of Appeals did not pass upon the question, merely expressing its willingness to accept *arguendo* the Board's conclusions that anti-union motives predominated and that, even if other reasons played a part, if unionization also contributed to the decision to close the plant "then the contribution of this factor may be considered as responsible for the cessation." (R. 1899). The evidence that might or might not support the Board on either branch of its holding has not been judicially evaluated as to its substantiality.

III

DARLINGTON'S ALLEGED RELATIONSHIP TO OTHER CORPORATION CANNOT MAKE ITS LIQUIDATION, IF LAWFUL STANDING ALONE, AN UNFAIR LABOR PRACTICE.

The Board's examiner, upon its direction, conducted a prolonged inquiry into whether some twenty other corporations whose ultimate majority ownership was in the hands of various members of the Milliken family constituted a "single employer" with Darlington. He found, upon an exhaustive analysis of the evidence he received, that there was "clearly" no "single employer." (R. 117-227).[25] The Board reversed. It held that the companies, only one of which in addition to Darlington was even a party to the proceeding, did constitute a single employer and were therefore liable for remedial action on account of Darlington's unfair labor practices.

The Board also found in the relationship between Darlington and the Milliken corporations an additional reason for holding Darlington's liquidation il-

[25] "Clearly (in this situation I do not hesitate to use the term) no single employer status has been shown here." (R. 194).

legal. The Board reached this conclusion in one brief paragraph (R. 18):

> "There is, moreover, independent reason for rejecting the contention that Darlington had an absolute right to close down its mill and discharge its employees. As will appear below, Darlington was but one constituent part of a single entity, consisting of Deering, Milliken and Company and its affiliated corporations. Thus we have here the closing of a single plant of the several in the one entity because of union activity, conduct clearly proscribed by the Act.[81]
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> "[81] *N.L.R.B.* v. *Norma Mining Corporation*, 206 F.2d 38, 41-42 (C.A. 4)."

We submit that for the reasons set forth below Darlington's relations with other corporations cannot furnish any basis for the holding that in the liquidation of Darlington there was a violation of the Act.

A.

The Board erred in its assumption that, if Darlington and the corporations found to be related to it are shown to have constituted a single employer, the case becomes equivalent to those in which employers have been held liable for such conduct as plant transfers or the elimination of auxiliary departments when such conduct had a discriminatory purpose. Even if Darlington were but one among several textile plants operated by what was indubitably a single employer, the permanent and complete closing of one of those plants, without the transfer of its business to any of the others, would still remain in substance the complete liquida-

tion of a business and could be carried out for any reason whatever. In such a case, the fact that the owners of the business also owned other businesses (or other "parts" of the same business; the distinction is only verbal) is irrelevant. The liquidation would still possess the characteristics of a complete cessation of a business (or of "part" of a business), involving withdrawal of the capital invested therein and the abandonment of the attempt to make a profit therefrom. If an employer operated both a textile mill and a bicycle factory, his ownership of the bicycle factory would not render illegal his closing down the textile mill if it would otherwise be legal. And it should make no difference that both his enterprises might be textile mills.

The permanent closing of a plant and the liquidation of the corporation owning it have no determining characteristics in common with any situation that has been held an unfair labor practice. In its decision the Board relied solely on *NLRB* v. *Norma Mining Corp.*, 206 F.2d 38 (4th Cir. 1953). That case did not involve the closing of a plant and the sale of its equipment, much less the liquidation of a corporation, but rather a cessation of mining operations at a particular mine where the employer continued to own the mining rights. There was nothing to prevent mining from being resumed as soon as the union had been disposed of, and the court strongly implied that the employer was in fact planning to do precisely that. When the present case was before the Court of Appeals for the Fourth Circuit, which had decided *Norma*, both the majority and dissenting opinions authoritatively distinguished *Norma* as involving only a "temporary intermission"

of operations, not a permanent shutdown. (R. 1899, 1910).[26]

In this Court petitioners cite, in addition to *Norma*, certain other decisions in the courts of appeals which they assert support their position.

The Board recognizes the factual distinctions between the bulk of the cases it cites and this case. Thus it speaks, citing cases for each clause in its discussion, of "the discrimination which occurs when a plant is temporarily closed so as to discharge all its employees and replace them with non-union labor; when an operation is shut down preparatory to transferring its functions to a non-union division of the same company, or to subcontracting the work to an independent employer."[27] (NLRB Br. p. 34). It urges that the "discrimination" in these cases "is the same in principle" as in the case of a permanent shutdown of the Darlington mill, although it acknowledges in a modest understatement that "it may differ slightly in its impact upon the employer. . . ." (*Ibid.*). The proposition should properly be turned around. It is because of the difference in impact upon the employer that a distinction exists between situations in which there is

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[26] The union admits that the *Norma* shutdown was temporary. (AFL-CIO Br. pp. 7, 9).

[27] One of the cases cited by the Board as falling in the last category is NLRB v. Preston Feed Corp., 309 F.2d 346 (4th Cir. 1962). In fact that case did not involve a transfer of work to "an independent employer." There a manufacturing company, without curtailing in any way its manufacturing operations, simply transferred to another company *under the same management and control* the auxiliary function of transporting its manufactured goods to purchasers. The dissenting judges in the court below asserted that this decision was "controlling on the legal issue here" (R. 1910), apparently without recognizing the essential difference between the facts there involved and the facts in the present case.

a permanent and complete withdrawal from business, or from a major discrete and self-sustaining part of a business, and situations in which the employer, through one artifice or another, is simply continuing what is essentially the same business in another form or in another place. This difference in impact, as we have pointed out above, is one of the reasons that requires the conclusion that the final and complete liquidation of an entire business, regardless of its motive, does not violate the statute. The same principle should apply where the closing of one of several plants, each a major self-sustaining economic unit, is bona fide, complete and permanent, and does not involve a transfer of the business to another plant under the same ownership and management or some other artifice to retain the benefit of the business without the burden of unionization.

The union is not so careful or discriminating as the Board in discussing the facts involved in the decisions of the lower federal courts. It cites certain cases as involving permanent withdrawals from business which in fact did not involve such withdrawals or in which there were additional relevant facts that distinguish the cases from the situation here presented.[28]

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[28] For example, the union describes NLRB v. Wallick, 198 F.2d 477 (3d Cir. 1952), as a case involving the permanent closing of one of several plants. (AFL-CIO Br. p. 7, n. 8). The Board properly states that *Wallick* was a case of a shut-down of an operation "preparatory to transferring its functions to a non-union division of the same company." (NLRB Br. p. 34 & n. 29). Williams Motor Co. v. NLRB, 128 F.2d 960 (8th Cir. 1942), not even cited by the Board in this part of its argument, is described by the union as involving the permanent closing of a part of a business. This is a half truth; the case in fact is a classical instance of an employer ridding himself of three union members by discontinuing their department and contracting the work out.

There are only two cases cited in the briefs of petitioners that are even arguably relevant to the issue presented here. These are *NLRB* v. *Savoy Laundry, Inc.*, 327 F.2d 370 (2d Cir. 1964), and *NLRB* v. *Missouri Transit Co.*, 250 F.2d 261 (8th Cir. 1957). In neither of these cases was the issue here presented squarely raised and discussed by the court because in each case the employer defended on the ground that his actions were prompted by legitimate economic considerations and not by animus against the union.

Neither case involved the permanent and complete liquidation of a part of a business that was comparable in any way to the complete and permanent liquidation that took place here by reason of the dissolution of Darlington. The facts in the cases do not support the Board's assertion that they involved "the discontinuance of major phases of the employer's business." (NLRB Br. p. 38). In *Savoy Laundry* there was in a real sense no permanent or compete withdrawal from any discrete part of the business. There the employer had conducted an integrated laundry business, a part of which was a wholesale shirt laundry operation. Because of union activities the employer, without withdrawing completely from the wholesale shirt laundering operation, simply reduced the volume of that operation and used the reduction as an excuse for discharging employees who were active in the unionization campaign. Since the employer was still in the wholesale shirt laundry business and since it had sold no equipment, there was no physical bar to its resumption of dealings with the customers whose work it had declined.

In the *Missouri Transit* case the employer was engaged in conducting an interstate bus service between a point in Missouri and a point in Iowa. It also operated over a segment of that route a shuttle bus service

between two points in Missouri. In an attempt to discourage union activity the employer disposed of certain equipment used in the intrastate shuttle bus service, discontinued that operation and discharged certain employees who were active in the unionization campaign. It appears from the report of the proceedings before the National Labor Relations Board that even after this step was taken the employer still supplied bus service between the two points served by the shuttle operation and that by far the greater part of its revenues was derived from intrastate operations which it continued to perform after abandoning the shuttle service. See 116 N.L.R.B. at 596, 597.[29] The reports of that case do not show that the withdrawal from the shuttle service, which was sometimes described as a "transfer" and sometimes as a "lease or sale," was permanent or complete (116 N.L.R.B. at 590, 591, 601 n. 11), and there is nothing in the reports that would justify the conclusion that the withdrawal had any economic impact on the employer that was in any sense comparable to the economic impact of the complete and final liquidation of Darlington.

It does not advance analysis to refer in general terms, as petitioners do, to the closing of a "part" of a business. That kind of broad brush treatment leaves unanswered the critical question, *i.e.*, what kind of "part" is involved. The rearrangement for discriminatory purposes of details of a company's operations, for example by the subcontracting of certain auxiliary tasks formerly performed by the employer directly, or by the discontinuance of subordinate operations

[29] There was evidence offered to the trial examiner that the abandonment of the shuttle line service was a sham, but the Board regarded the evidence as insufficient to support a finding to that effect. 116 N.L.R.B. at 591.

which does not substantially affect the continuance or general scope of the employer's profit-making enterprise, is entirely different from the kind of complete and final liquidation of a self-sufficient enterprise that occurred here. The partial liquidation of a business, involving the withdrawal of the capital invested in that part and the renunciation *pro tanto* by the employer of its opportunities for business success, should be subject to the same standards as those applicable to the complete liquidation of a business. As the Court of Appeals held here, a unique situation is presented by "the extinguishment altogether of [part or all of] the business and the end of further participation by the employer in his former sphere. The predominant element of the principle we maintain is that the business is no longer extant and the owner has forfeited the penalty for withdrawing, that is, he has foregone the privilege of further pursuit of his business." (R. 1901).

The easy glide of the Board's opinion from the question of remedy to the question of substantive violation cannot conceal the realities of the situation or the highly artificial character of the Board's conclusion. It is one thing to conclude that once an unfair labor practice has been independently established adequate redress requires that the remedy extend to another business unit that was not directly involved in the substantive violation. It is quite a different thing to conclude that a relationship that may justify extension of the remedy can be used in the first instance to establish a violation of the statute. The failure of the Board to observe this distinction led it to the extraordinary conclusion that for the purposes of determining whether a substantive violation had been

committed the relationship between Darlington and Deering Milliken made Darlington comparable, for example, to one of several operations conducted in a single laundry. The fact is that Darlington was a separate corporation, it ran a separate mill and there was no single corporate entity of which it could rationally be considered an operating division. These are facts that cannot be disputed and would not be disputed by the Board despite its "single employer" finding. They distinguish Darlington's from every prior case decided by the Board or by a court. The imprecisions of speech that lead to the use of a phrase like "part of a business" to cover a number of very different fact situations, and the natural tendency to use convenient shorthand terms such as the "Deering Milliken mills" instead of a more accurate but more cumbersome form of words, should not be allowed to obscure these facts. They are critical to decision in this case.

B.

Even if the Board were correct in treating Darlington as merely one department of a single integrated employer, this would bring the case squarely within the scope of the line of cases already discussed, which hold that an employer may consider the economic impact of the advent or presence of a union as a factor in reaching management decisions as to the conduct of its business. (See pp. 43-51, *supra.*) If the Court concludes that the Board was wrong in its rigid insistence that the presence, conduct, threats or promises of a labor union can never be an economic factor which an employer may lawfully consider, then it can and should affirm the decision of the Court of Appeals

without reaching the question whether Darlington and certain related companies constituted a single employer.

C.

The single-employer doctrine has never before been employed as an element in finding an unfair labor practice where otherwise there would be none. The doctrine has evolved as an aid, once an unfair labor practice has been held to exist, in determining on whom the burden of carrying out the remedy may be imposed. *E.g., NLRB* v. *Deena Artware, Inc.*, 361 U. S. 398 (1960). In the present case, in contrast, if it is true that an employer has a right to go out of business regardless of motive, then the Board's "single employer" holding transforms what would otherwise be lawful conduct into an unfair labor practice because of the employer's relation to other corporations. This is an unprecedented result and not one that should commend itself to this Court.

There may possibly be an appropriate case for transforming the "single employer" concept, which heretofore has been used solely for remedial purposes, into a standard for determining the legality of a course of conduct, but this is not such a case. On the facts found by the trial examiner in his exhaustive consideration of the matter, and the facts found by the Board, it is clear that imposition of "single employer" liability would be wholly inappropriate in this case.

It is undisputed that the corporations found by the Board to constitute a "single employer" lack substantial identity of ownership. No single individual or corporation holds a majority interest in any of them. The "Milliken family," which the Board treated

as a single entity having (directly or indirectly) a controlling interest in each of the corporations, in fact consisted in 1959 of 27 different individuals, many of them not very closely related to each other, and one estate. No showing was made that they act monolithically or as a unit. Moreover, most of the corporations are in substantial part owned by shareholders who are conceded to be unrelated by blood or otherwise to the Millikens. Independent shareholders owned at least 31 per cent of the stock of Darlington. (R. 1310). The independent ownership interest in the other mill corporations ranged as high as 45 per cent. (R. 1309-10).[30]

No court has held that different corporations constitute a single employer, for purposes of remedial liability and in circumstances like the present, when substantial identity of ownership is absent. The prior cases, it should be emphasized, relate to whether a remedy can be had against what is in form a separate entity for an undoubted unfair labor practice committed by another entity to which the first is related. They do not involve the farther-reaching issue here, which is whether conduct innocent if committed by a separate entity becomes actionable because of that entity's relationship to others. Where substantive liability is made to depend on the relationship, that relationship should be a tighter unitary relationship than where the only question is the nature of the remedy. Regard-

[30] The largest independent interest in any of the mills, 45 per cent, was in the Hartsville Cotton Mill, which as the plant geographically closest to Darlington would bear the brunt of the burden of the Board's order that Darlington's employees be reinstated at the other "Milliken" mills.

less of that fact we here meet the Board on its own ground and show that on that ground its decision cannot be sustained.

The courts have refused to find single employer status when it was shown that substantial identity of ownership was lacking, even though common majority ownership and common control were present. For example, in *Mount Hope Finishing Co.* v. *NLRB*, 211 F.2d 365 (4th Cir. 1954), the two corporations alleged to constitute a single employer were controlled by the same individual, who owned 100 per cent of one and 60 per cent of the other. The court appears to have regarded the 40 per cent minority interest as the determining factor in its holding that single employer status had not been shown. 211 F.2d at 372. In *NLRB* v. *Gibraltar Industries, Inc.*, 307 F.2d 429, 431 (4th Cir. 1962), the court listed "unity of interest" first among the bonds that must be found between two corporations before they can be held to be a single employer. *Accord, NLRB* v. *Jones Sausage Corp.*, 257 F.2d 878, 880 (4th Cir. 1958) ("substantial identity of ownership"); *NLRB* v. *Lund*, 103 F.2d 815, 819 (8th Cir. 1939). Board member Leedom was clearly correct in observing in the present case that "there is here an absence of common ownership within the meaning of the decided cases." (R. 34).

Petitioners have alleged here (*e.g.*, TWUA Br. p. 18) and in the Court of Appeals that various court cases support the proposition that vicarious liability may be imposed even in the absence of substantial identity of ownership. None of these cases in fact supports that proposition. In some of them the "single employer" issue was not raised on appeal and the opinions do not reveal whether substantial identity

of ownership was present. *E.g., NLRB* v. *Whittier Mills Co.*, 111 F.2d 475 (5th Cir. 1940); *NLRB* v. *Calcasieu Paper Co.*, 203 F.2d 12 (5th Cir. 1953); *NLRB* v. *Summers Fertilizer Co.*, 251 F.2d 514 (1st Cir. 1958). Certain cases hold that two or more companies without substantial identity of ownership constituted a single employer for purposes of determining an appropriate representation unit, *NLRB* v. *A. K. Allen Co.*, 252 F.2d 37 (2d Cir. 1958); *NLRB* v. *Arnolt Motor Co.*, 68 N.L.R.B. 868, 872-73 (1946), *aff'd*, 173 F.2d 597 (7th Cir. 1949), or for the purpose of vesting jurisdiction in the Board, *NLRB* v. *McCatron*, 216 F.2d 212 (9th Cir. 1954). But the test of being a "single employer" for these purposes can properly be much less stringent than that for the purpose of imposing vicarious liability.

In some of the cases cited all the companies found liable had themselves directly participated in the unfair labor practices in question. *E.g., NLRB* v. *Long Lake Lumber Co.*, 138 F.2d 363 (9th Cir. 1943). In others, the company held secondarily liable was one that had voluntarily succeeded to a business with notice of unfair labor practices previously committed therein. *NLRB* v. *Hopwood Retinning Co.*, 98 F.2d 97 (2d Cir. 1938); *NLRB* v. *O'Keefe and Merritt Mfg. Co.*, 178 F.2d 445 (9th Cir. 1949). In other cases the company held "secondarily" liable was both a direct participant in the unfair labor practices and also a successor (or predecessor) with notice, the transfer of technical ownership being held a sham or subterfuge. *NLRB* v. *United States Air Conditioning Corp.*, 302 F.2d 280 (1st Cir. 1962); *NLRB* v. *Lewis*, 246 F.2d 886 (9th Cir. 1957). In one case company *A*, held primarily liable, had independent shareholders, but company *B*, held secondarily liable, was wholly

owned by the majority shareholders who controlled company *A*. *NLRB* v. *Don Juan, Inc.*, 178 F.2d 625 (2d Cir. 1949). Thus none of the cases relied on stands for the proposition that vicarious liability under the National Labor Relations Act may be imposed on a company owned in substantial part by persons not connected with the company held primarily liable.

The reason behind the lack of precedent for such liability is clear. It may be justifiable to hold one corporation financially and remedially responsible for the acts of another when the ownership of the two is substantially identical. But when that factor is absent it obviously would work a grave injustice on the minority owners of the corporation held secondarily responsible, who are thus penalized for the acts of others over which they had no control and which they were powerless to prevent. "The insulation of a stockholder from the debts and obligations of his corporation is the norm, not the exception." *NLRB* v. *Deena Artware, Inc.*, 361 U.S. 398, 402-03 (1960). Much more is it "exceptional," indeed unprecedented, to penalize shareholders for acts committed by their co-shareholders in the conduct of a separate enterprise.

The injustice is well illustrated by the present case. How can it be justifiable to hold the 31 per cent minority owners of Darlington responsible for an unfair labor practice because of the other business affiliations of the majority shareholders? Conversely, how can it be justifiable to charge the minority shareholders of the other mill corporations—with interests running up to 45 per cent—with a pro rata share of the huge financial penalty imposed in this case and with the burden of eradicating the consequences of conduct by another company in which they had no

interest and over which they had no control? If it be said that it is the corporations, not the shareholders, which are being burdened, the answer is that that is inconsistent with the Board's "single employer" theory of responsibility, which is a form of "piercing the corporate veil." If a court or the Board is to "pierce the corporate veil" it must pierce it thoroughly and consistently, and with a due regard for the realities as to where the burdens it imposes will fall.

It is submitted, then, that the substantial disparities in ownership between Darlington and the other Milliken corporations, and among those corporations themselves, furnish a clear-cut basis for holding that they cannot constitute a single employer. But if the Court believes that consideration of this factor should be supplemented by an examination of the whole range of relationships among these corporations, then the sound procedure is a remand to the Court of Appeals.

* * * *

For the reasons advanced, the decision of the Court of Appeals can and should be affirmed either on the ground that it does not matter whether Darlington and the Milliken corporations constitute a single employer, or on the ground that as a matter of law they could not constitute a single employer for the purpose of finding an unfair labor practice in conduct that would be innocent were the one corporation engaging in the conduct considered individually.

If the Court should, however, decide that the Board is not plainly wrong on the law and that the "single employer" issue should be resolved on the evidence of record, the case should be remanded to the Court of

Appeals for appellate review of the Board's findings on this point. Such review has not yet been had, since the Court of Appeals found it unnecessary to decide the "single employer" question. The evidence introduced before the examiner on that question comes to more than 1,200 pages, more than two-thirds of the printed record. The examiner, who held that no single-employer status had been demonstrated, required 110 pages (R. 117-227) to state his findings of fact on what he considered a highly complex and intricate question. In these circumstances, due consideration for the proper allocation of labor among the courts and the burden on this Court's time suggests the wisdom of a remand to the Court of Appeals. See *NLRB* v. *Walton Manufacturing Co.*, 369 U.S. 404, 408 (1962); *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 491 (1951); *NLRB* v. *Pittsburgh S.S. Co.*, 340 U.S. 498, 502-03 (1951); *NLRB* v. *Donnelly Garment Co.*, 330 U.S. 219, 237 (1947). The Court would thereby avoid the necessity of sifting through a voluminous record without the benefit of the sharpening of the issues and isolation of the relevant materials that would result from a decision by the Court of Appeals on the "single employer" question. There is no dispute on this point between Darlington and the Board, which agrees that "the [single employer] issue would appear to be open on remand." (NLRB Pet. p. 10, n. 6a).

IV

THE INTERPRETATION OF THE ACT ASSERTED BY PETITIONERS RAISES GRAVE CONSTITUTIONAL ISSUES.

This case can and should be decided by this Court upon the basis that the Court of Appeals was correct in holding on this record that Darlington had an unqualified right permanently to go out of business. However, if the Act is interpreted to empower the Board to order Darlington to pay unearned wages to a large group of former employees during a period after all commerce had ceased and after the employer-employee relationship had completely terminated, then the underlying constitutional issues must be met.[31]

A. THE ACT AS CONSTRUED BY THE BOARD EXCEEDS THE POWER OF CONGRESS TO REGULATE COMMERCE.

The men who framed our Constitution were exceedingly wise. They were deeply versed in the long history of man's bitter struggle for freedom. From it they had absorbed the everlasting truth that freedom is mankind's most precious value, and the tragic truth that the insatiable thirst of government for power will inevitably extinguish freedom unless government is restrained by an organic law.

In distributing the powers allotted to the Federal Government, the Constitution vests in the Congress by Article I, Section 8, Clause 3, the power "to regulate

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[31] Board Member Rodgers avoided the "constitutional issues" (R. 36) by his reading of the Act, and the majority of the Court of Appeals was of the view that "a statute authorizing an order forcing the continued pursuit of operations in these circumstances would be of doubtful validity." (R. 1899).

commerce with foreign nations, and among the several states, and with the Indian tribes." However, the regulatory power of Congress over persons or things connected with interstate commerce terminates when the connection of such persons or things with interstate commerce ceases. *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937); *NLRB* v. *Mackay Radio & Tel. Co.*, 304 U. S. 333, 348 (1938); *American Communications Ass'n.* v. *Douds*, 339 U. S. 382, 387 (1950); *United States* v. *International Boxing Club*, 348 U.S. 236 (1955); *United States* v. *Shubert*, 348 U. S. 222 (1955).

The National Labor Relations Act uses the term "employee" 78 times, the term "employer" 64 times, the term "employment" 22 times and the term "commerce" 31 times. In all instances the terms "employee," "employer," "employment" and "commerce" are used in the Act in contexts which disclose that the Congressional purpose of the Act is to secure to employees the right to organize and bargain collectively through representatives of their choice with their employer in respect to their conditions of employment, and to prevent their employer from engaging in unfair practices which interfere with such rights only so long as the employment relationship exists between the employees and their employer, and only so long as their employer is engaged in interstate commerce or in an industry affecting interstate commerce. For Congress to attempt to deny to any employer the power and right to remove himself from the regulatory power of Congress under the Commerce Clause at any time, for any reason, by completely and permanently going out of business would exceed the scope of its power. Similarly, Congress would exceed its powers if it empowered the

Board to require a former employer to pay full or partial wages to former employees for periods subsequent to a withdrawal from business. In other words, the Commerce Clause would not justify an attempt on the part of Congress to require any person to become or to remain an employer in interstate commerce or in an industry affecting interstate commerce. Such an attempt on the part of Congress would be incompatible with the economic freedom which the Constitution is designed to secure to the people, both collectively and individually. Congress cannot use the Commerce Clause as a pretext for accomplishing either directly or indirectly purposes not entrusted to the Federal Government. *Linden* v. *United States*, 268 U. S. 5, 17 (1925).

It is necessary to keep in mind the true concept of the Act as set forth by this Court in *Republic Steel Corp.* v. *NLRB*, 311 U. S. 7, 10 (1940):

> "The Act is essentially remedial. It does not carry a penal program declaring the described unfair labor practices to be crimes. The Act does not prescribe penalties or fines in vindication of public rights or provide indemnity against community losses as distinguished from the protection and compensation of employees." *Cf. United Bhd. of Carpenters* v. *NLRB*, 365 U. S. 651 (1961).

B. THE ACT AS CONSTRUED BY THE BOARD DEPRIVES DARLINGTON AND ITS STOCKHOLDERS OF RIGHTS IN VIOLATION OF THE FIFTH AMENDMENT.

The Fifth Amendment prevents the Federal Government or its agencies from depriving any person of his property without due process of law. This con-

stitutional provision preserves and protects the right of property, which is a natural, inherent and inalienable right that had its origin many centuries before the adoption of the Constitution.

The constitutional guaranty that no person shall be deprived of his property without due process of law may be violated by a statute even though the statute does not authorize the actual physical taking or destruction of the thing owned. A statute effects a deprivation of property within the meaning of this constitutional guaranty and for that reason is void if the statute undertakes to extinguish or impair any of the owner's rights in respect to the thing owned by him, such as his right to possess it to the exclusion of others, or his right to use it for any lawful purpose selected by him or his right to dispose of it. *Sterling* v. *Constantin*, 287 U.S. 378 (1932); *Chicago, R. I. & P. Ry.* v. *United States*, 284 U. S. 80 (1931).

Although Congress may permissibly regulate the commerce activities of Darlington, yet Congress must conform to due process in the choice of means to effect such regulation. *Virginian Ry.* v. *System Federation No. 40*, 300 U.S. 515, 558 (1937); *Railroad Retirement Bd.* v. *Alton R.R.*, 295 U.S. 330, 347 (1935). But, here the means chosen, *i.e.*, an order requiring the reinstatement of employees with back pay constitutes an infringement of Darlington's constitutional and common-law rights. And the union goes further by urging this Court to require Darlington to use any assets available to it to acquire by construction or otherwise another plant suitable for the production of textile goods, and resume the production of such goods after a lapse of eight years or more, irrespective of the wishes of either the majority or minority stockhold-

ers of Darlington and regardless of the corporate capacity of Darlington to engage in the textile manufacturing business.

If the foregoing affirmative acts should be required of it, Darlington would be deprived of its constitutionally protected rights to possess its property to the exclusion of others, to use its property for a lawful purpose selected by it rather than by an agency of the Federal Government, and to dispose of its property.

Other insurmountable objections which preclude the enforcement of the Board's order are the constitutionally protected rights of the stockholders of Darlington and the corporate incapacity of Darlington to engage in business.

Darlington was a private corporation chartered under the laws of the State of South Carolina in 1883 for the purpose of manufacturing textile products, and with many individual stockholders. These stockholders have rights falling into these two categories: (1) rights belonging to them as members of society; and (2) rights belonging to them as stockholders of the corporation.

As members of society, they have the rights of "liberty" and "property" which are protected against deprivation without due process of law by the Fifth Amendment. As stockholders of the corporation, they have the right by law to dissolve the corporation and receive as their individual property their proportionate shares of the corporate property or its proceeds remaining after the payment of the debts in existence at the time of the dissolution.

Pursuant to the authority vested in them by the law of South Carolina, embodied in sections 12-641 and 12-642 of the 1942 Code of Laws of South Carolina,

the stockholders of Darlington dissolved it, and thereby became entitled to receive their proportionate shares of its assets, subject only to the payment of its then existing debts and the costs of winding up its affairs. This event occurred more than eight years ago, and notwithstanding their constitutional right to the same, the undisbursed assets of Darlington have been withheld from its stockholders ever since that time.

In dissolving Darlington the stockholders exercised rights falling into each of the foregoing categories. They exercised the "liberty" protected by the Fifth Amendment by doing an act which they judged best for their interests and the right to dissolve Darlington secured to them as its stockholders by the laws of South Carolina.

There is no basis for the argument that in so doing the stockholders of Darlington infringed upon the rights of others. Neither the Federal Government nor any of its agencies had a right to prevent the stockholders of Darlington from dissolving the corporation, nor to require that their respective interests in the assets of Darlington should be devoted to the carrying on of a business or to the payment of wages allegedly lost by former employees of Darlington subsequent to the dissolution. Accordingly, the stockholders of Darlington would be deprived of their liberty and property in violation of the Fifth Amendment by the Board's order.

Congress cannot impose upon a private corporation any obligation whose performance is inconsistent with the powers conferred upon it by the laws of the state of its creation. In the absence of a state law making other provision, the dissolution of a corporation puts

an end to its existence and destroys every one of the powers possessed by it so that it cannot thereafter do anything whatever in its corporate capacity. *Greenwood* v. *Freight Co.*, 105 U.S. 13 (1881); *Oklahoma Natural Gas Co.* v. *Oklahoma*, 273 U.S. 257 (1927): "It is well settled that at common law and in the Federal jurisdiction a corporation which has been dissolved is as if it did not exist, and the result of the dissolution can not be distinguished from the death of a natural person in its effect." *Matthews* v. *Bank of Allendale*, 60 S. C. 183, 38 S.E. 437 (1901); *Browne* v. *Hammett*, 133 S. C. 446, 131 S.E. 612 (1926).

South Carolina has limited statutes prolonging the corporate existence of corporations beyond their dissolution for liquidating and litigating purposes only. Section 12-601 provides that dissolved corporations "shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital, but not for the purpose of continuing the business for which they were established."

Therefore, for all legal purposes and intents, Darlington has been a dead corporation except for the limited purposes of litigating controversies arising before its dissolution and liquidating its affairs since its dissolution, and it has been expressly barred by law from continuing the business for which it was established.

V

THE QUESTION OF REMEDY NEED NOT BE REACHED BY THIS COURT WHATEVER ITS DISPOSITION OF THE SUBSTANTIVE MERITS; IN ANY EVENT THE UNION'S PROPOSAL THAT DARLINGTON BE MADE TO RECONSTITUTE ITSELF SHOULD BE SUMMARILY REJECTED.

As affecting Darlington, the remedy ordered by the Board was the award of back pay from the time the company was liquidated and the plant closed in 1956 until the employees find substantially equivalent employment. The union contends that this remedy was inadequate, and that the Board should have ordered the reopening of the Darlington plant. (TWUA Br. pp. 30-42). The Board argues remedy only as a prop to its argument on the merits (NLRB Br. pp. 43-48), treats only of the "single employer" remedy, not the order directed to Darlington, and says that it does not "seek to anticipate questions which may be raised, on remand, in the court of appeals." (NLRB Br. p. 48). As indicated by the quotation from the Board's brief, the Court of Appeals, having set aside the Board's order on the merits of the supposed violation, did not reach the question of the remedy. That question would be for the Court of Appeals on remand should this Court reverse its judgment. The union, however, has invited this Court to go to the question of remedy. We here address a few comments to the union's extraordinary proposal that Darlington be required to recreate itself and reopen its plant and also, by way of indicating that the remedial questions for the Court of Appeals should there be a remand would be serious, to the arbitrary, punitive nature of the Board's prescribed remedy as it applies to Darlington.

1. The Board has, of course, broad discretion in shaping remedies and in exercising that discretion should consider all the relevant interests, factors and circumstances. *Phelps Dodge Corp.* v. *NLRB*, 313 U. S. 177, 198 (1941). The union's contention that the Board, once having found an unfair labor practice in the liquidation of Darlington, was obligated to take the unprecedented step of ordering construction and operation of a new textile mill at Darlington is utterly without merit.

As applied to Darlington Manufacturing Company, such an order would really run against its stockholders, since the company itself has no remaining assets sufficient for the construction and outfitting of a textile plant. If the union were to prevail, the individual and corporate stockholders of Darlington, many of whom have never been parties to this proceeding, would apparently be compelled to invest their funds in a new capitalization of Darlington so that the "restoration of the status quo" demanded by the union could take place. No tribunal has ever entered such an order, which would almost certainly be unconstitutional. It can hardly be seriously maintained that the Board exceeded its discretion in rejecting the union's proposal in favor of what was, as we shall see, an only slightly less startling remedy.

Even if the union's argument be read as a demand for an order that Deering Milliken alone establish a new textile plant at Darlington, the position is not very different. The union blithely ignores the substantial investment in plant and equipment necessary to create from nothing a brand-new textile mill—a major industrial undertaking even if, as the union maintains, capital investment required per production worker would

be "only" $10,050. (TWUA Br. p. 40). As already shown (pp. 8-9, *supra*), this Court cannot base a decision on the view that Darlington's business was absorbed by other Deering Milliken mills, let alone on the assumption that such business could be magically transferred back to a reconstituted Darlington. Neither is it accurate that the Darlington management was kept within the Deering Milliken "organization" and could readily be reassembled. The treasurer and chief operating officer of Darlington, for example, was not employed by any other Deering Milliken mill and left the textile business altogether. (Tr. 76). No responsible investors would decide on the location of a substantial new textile plant in a small town without thorough investigation as to the availability of adequate labor. The union's speculation that Darlington's former employees would be instantly available for employment is, at least, open to question. Investors also would be interested in whether there were reasonably in prospect orders for the goods the plant might produce. To require the construction of a plant which might have to close down almost immediately for lack of labor or lack of orders would be futile as well as punitive.

In refusing to order the resumption of operations at Darlington the Board could, moreover, consider the finding of its trial examiner, which it accepted, that Darlington had been in serious economic difficulties and might well have closed at any time. (See p. 9, *supra*.) Since there are thus strong indications that Darlington would have gone out of business years ago even had the Textile Workers Union of America never appeared on the scene, the Board was doubly justified in refusing to order its reconstitution now.

2. We agree with the position of the Board that questions with respect to the remedy should be remitted to the Court of Appeals if they arise. The Board's order raises certain serious and substantial questions that have not been considered by the court below but should be considered by it if the case is not disposed of, as it should be, by affirming its judgment that there was no violation.

As it stands, the Board's order is punitive and arbitrary as to Darlington. The Board awarded back pay to run from the time of the discharge of the workers late in 1956 "until the discharged employees are able to obtain substantially equivalent employment." (R. 22). The Board's decision was rendered on October 18, 1962, more than six years after the first employees were discharged in pursuance of Darlington's liquidation, and five years and eleven months after the last employees were discharged. Since Darlington's payroll as of October 1956 amounted to nearly $30,000 a week (R. 285), the Board's decision may entail a possible maximum payment of several million dollars for the period before the decision was rendered. This total would be substantially increased by the provision of the Board's order which imposes liability for back pay from the time since the Board's decision was handed down. The financial penalty that the Board asks this Court to uphold is many times greater than the capital worth of Darlington or the value of its stock at the time the liquidation occurred. (See p. 40, *supra.*)

The present case is the first in which the Board has imposed a back-pay liability running beyond the date when a business was finally and completely liquidated. Every previous back-pay obligation imposed by the

Board had expired at the date the employer went out of business. *E.g., Ray Nichols, Inc.*, 15 N.L.R.B. 846 (1939); *Cleveland-Cliffs Iron Co.*, 30 N.L.R.B. 1093, 1115 (1941), *enforced*, 133 F.2d 295, 302 (6th Cir. 1943); *Reynolds Corp.*, 74 N.L.R.B. 1622, 1672-73 (1947); *Randolph Corp.*, 89 N.L.R.B. 1490, 1495 (1950); *Colonial Fashions, Inc.*, 110 N.L.R.B. 1197, 1204 (1954). The doctrine of this line of cases was discussed and reaffirmed in *Barbers Iron Foundry*, 126 N.L.R.B. 30, 33 (1960):

> "[T]he Board has declined to order back pay beyond the date of the permanent cessation of business operations. . . . [W]e do not agree with the General Counsel's suggestion that an employer who permanently closes his plant and discontinues business operations should be ordered to continue paying wages to its employees, either for a definite period of time arbitrarily fixed by the Board (for example, 6 months), or for an indefinite period of time, the duration of which is contingent upon the employees' obtaining substantially equivalent employment elsewhere."

Accord, M. Yoseph Bag Co., 128 N.L.R.B. 211, 219 (1960).

In *NLRB* v. *New Madrid Mfg. Co.*, 215 F. 2d 908, 915 (8th Cir. 1954), it was expressly held that a back-pay obligation ceases when a plant is permanently closed. To the same effect is this Court's comment in *Southport Petroleum Co.* v. *NLRB*, 315 U.S. 100, 106 (1942), that a permanent discontinuance of business terminates the duty of reinstating workers: since a back-pay obligation is contingent on a duty to reinstate, it too must cease when a business is liquidated.

The Board did not even discuss its departure from its own uniform rule in this case. Member Leedom, dissenting, correctly concluded that back pay should extend "only from the date of the discrimination to the date when the Darlington plant closed." (R. 34).

The rule previously applied by the Board is clearly the sound one, since when a business has been liquidated no date can be set that would represent the termination of employment absent the unfair labor practice in question. In this as in other areas, the Board previously applied the rule that there can be no back-pay award when the proper amount thereof is impossible to ascertain. See *e.g., NLRB* v. *Somerset Shoe Co.*, 111 F.2d 681, 689-90 (1st Cir. 1940); *Leo L. Lowy*, 3 N.L.R.B. 938 (1937). The unsoundness of a different rule is particularly clear in the present case, since it is conceded that there were economic reasons wholly unrelated to the presence of the union that would have fully justified a decision by Darlington to go out of business. The examiner found that "we cannot say that but for . . . [the] violation . . . [Darlington's] operations would have continued for any definite additional period." (R. 45). And "it may be that, absent the election, a decision would lawfully have been made to shut down in 1956 or shortly thereafter." (R. 58). "The [purely economic] factors cited were sufficient to support a decision to terminate operations; certainly it cannot be said that such a decision could not reasonably, or even unreasonably but credibly, be based on these factors." (R. 65). It was for this reason that the examiner refused to recommend any back-pay order extending beyond the date of the plant closing. The Board, while issuing such an order, did not dispute or set aside the examiner's findings just quoted.

Thus if its order were sustained the Board would be in the position of imposing upon Darlington a back-pay liability that is unknown and, in the nature of things, unknowable. More than that, it is a liability that Darlington, again in the nature of things, cannot act to limit, because, having liquidated, it is not in a position to reinstate the employees and so end their entitlement to back pay. Imposition of such a liability is plainly punitive, and the Board has no power to punish. *United Bhd. of Carpenters* v. *NLRB*, 365 U.S. 651, 655 (1961).

3. During the years in which this case was in process before the Board it was following a principle adopted by it many years ago that where a trial examiner's report had been favorable to the respondent, a subsequent back-pay award should be tolled from the date of the intermediate report to the date of the final decision reversing it. The examiner's report was favorable to Darlington in not imposing back-pay liability, and to Deering Milliken in not finding "single employer" status.

The Board abandoned this principle in its decision in *A.P.W. Prod. Co.*, 137 N.L.R.B. 25 (1962), which was handed down on May 2, 1962, a few months before its decision in the present case. On appeal, the Court of Appeals for the Second Circuit noted that there may be instances "where the adverse effects of retroactive overruling so far outweigh any possible benefits that administrative agencies may not properly exercise the power in question." *NLRB* v. *A.P.W. Prod. Co.*, 316 F.2d 899, 906 (2d Cir. 1963). It held, however, that the Board was not legally precluded from reversing its long-standing tolling policy in the case, although it did not "altogether approve the procedure here," be-

cause the decision related only to a single employee so that it was fanciful to suppose that the decision not to rehire him was made in reliance on the tolling rule.

In the present case, as in *A.P.W.*, the respondent throughout the Board proceeding believed it was operating under a rule that would toll a back-pay award from the time of a favorable trial examiner's report to the date of final decision. And it is far from fanciful to suppose that business judgments were based upon the tolling rule. Thus, the court below, if the case comes to it again, will be called upon to decide whether this is the kind of case the Second Circuit foresaw but did not have before it in *A.P.W.*

CONCLUSION

For the foregoing reasons the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

SAM J. ERVIN, JR.
Morganton, N. C.

THORNTON H. BROOKS
440 West Market Street
Greensboro, N. C.
Attorneys for Respondent Darlington Manufacturing Company.

November 25, 1964.

APPENDIX

1. Labor Management Relations Act, 1947, § 1, 61 Stat. 136, 29 U.S.C. § 141 (1958):

Short title; Congressional declaration of purpose and policy.

(a) This chapter may be cited as the "Labor Management Relations Act, 1947."

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

2. National Labor Relations Act, § 2(3), 49 Stat. 450, as amended, 29 U.S.C. § 152(3) (1958):

When used in this subchapter—

* * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly

states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

3. National Labor Relations Act, § 8(a)(1), (3) and (5), 49 Stat. 452, as amended, 29 U.S.C. § 158(a)(1), (3) and (5) (1958), as amended, 29 U.S.C. § 158(a)(3) (Supp. V, 1964):

Unfair labor practices.

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered

by such agreement when made; and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

TEXTILE WORKERS UNION OF AMERICA,
Petitioner,

v.

DARLINGTON MANUFACTURING COMPANY, DEERING MILLIKEN, INC., DEERING MILLIKEN & COMPANY, INC., and NATIONAL LABOR RELATIONS BOARD.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

DARLINGTON MANUFACTURING COMPANY; DEERING MILLIKEN, INC.; DEERING MILLIKEN AND COMPANY; and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR DEERING MILLIKEN, INC.

STUART N. UPDIKE
JOHN R. SCHOEMER, JR.
Attorneys for Deering Milliken, Inc.
220 East Forty-Second Street
New York, New York 10017

JOHN LORD O'BRIAN
HUGH B. COX
Of Counsel
Union Trust Building
Washington, D. C.

INDEX

PAGE

QUESTIONS PRESENTED 1

STATEMENT 2

A. Ownership of Darlington Stock 3

B. Deering Milliken's Past and Present Role in this Case 5

C. Darlington was Not A "Runaway Plant" 8

D. Deering Milliken's "Control" of its Mill Principals 11

1. The "Related" Mills 11

2. Darlington's Independent Management 12

3. Deering Milliken as Sales Agent and Factor 16

E. Darlington's Independence in Labor Relations .. 21

SUMMARY OF ARGUMENT 26

POINT I—THE COMMON OWNERSHIP SHOWN ON THIS RECORD IS INSUFFICIENT TO SUPPORT THE BOARD'S ORDER AGAINST DEERING MILLIKEN 28

A. The Cases Require Greater Common Ownership Than Is Here Present 30

1. The Aggregate Holdings in the Commonly Owned Entities Must Closely Approximate 100% 31

2. The Milliken Family Is Too Large a Group To Serve As a Source of Ownership 33

B. The Board's Single Employer Finding Conflicts with this Court's Guidelines in *Deena Artware* . 34

PAGE

POINT II—AN EMPLOYER OWNING SEVERAL PLANTS DOES NOT VIOLATE THE ACT BY PERMANENTLY CLOSING ONE AS LONG AS NO DISGUISED CONTINUANCE EXISTS 36

POINT III—THE BOARD WAS CORRECT IN NOT ORDERING RESUMPTION OF THE DARLINGTON FACILITY AND IN AFFIRMING THE EXAMINER'S DISMISSAL OF THE COMPLAINT AGAINST ROGER MILLIKEN PERSONALLY 43

(A) Resumption of Operations 43

(B) Dismissing as to Roger Milliken Individually 44

CONCLUSION 45

TABLE OF CITATIONS

Cases Cited:

Aluminum Tubular Corp., 130 N. L. R. B. 1306, mod. 299 F. 2d 595 (2d Cir. 1962) 33

A. M. Andrews Co., 112 N. L. R. B. 626, enf'd 236 F. 2d 44 (9th Cir. 1956) 32, 33

Bachman Machine Co. v. *NLRB*, 266 F. 2d 599 (8th Cir. 1959) 22

Bethlehem Steel Co. v. *NLRB*, 120 F. 2d 641 (D. C. Cir. 1941) 22

Bonnie Lass Knitting Mills, 126 N. L. R. B. 1396 ... 44

Carol Management Corp., 133 N. L. R. B. 1126 33

Danspur Co., 114 N. L. R. B. 40 32

Dearborn Oil & Gas Corp., 125 N. L. R. B. 645 ....21, 28

Deering Milliken, Inc. v. *Johnston*, 295 F. 2d 856 (4th Cir. 1961) 11

Field Paper Box Co., 130 N. L. R. B. 22 33

Freedman v. *United States*, 157 F. Supp. 613 (E. D. Ohio 1958), aff'd 266 F. 2d 291 (6th Cir, 1959) .. 36

PAGE

Industrial Fabricating Inc., 119 N. L. R. B. 162, enf. 272 F. 2d 184 (6th Cir. 1959) 32

Lexington Elec. Prods. Co., 124 N. L. R. B. 1400, mod. 283 F. 2d 54 (3d Cir. 1960), *cert. denied* 365 U. S. 845 (1961) 32

Libby-Owens-Ford Glass Co., 115 N. L. R. B. 1452, *enf'd* 241 F. 2d 130 (2d Cir. 1957) 32

Lykes Bros. Inc., 128 N. L. R. B. 606 32

McCulloch v. *Sociedad Nacional*, 372 U. S. 10 (1963) 32

Milco Undergarment Co., 106 N. L. R. B. 767 33

Minnesota Mfg. Co., 132 N. L. R. B. 1398 33

Morielli Bros., 123 N. L. R. B. 635 ..... 32, 33

Mount Hope Finishing Co. v. *NLRB*, 211 F. 2d 365 (4th Cir. 1954) 41, 43

Mueller Industries, Inc., 132 N. L. R. B. 469 31

National Carbide Corp. v. *Commissioner*, 336 U. S. 422 (1949) 36

National Electronic Mfg. Corp., 113 N. L. R. B. 620 . 32

National Lead Co. v. *FTC*, 227 F. 2d 825 (7th Cir. 1955), rev'd 352 U. S. 419 (1957) 36

A. E. Nettleton Co., 108 N. L. R. B. 1670 (1954), *enf'd* 241 F. 2d 831 (4th Cir. 1957) 32

NLRB v. *A. K. Allen Co.*, 252 F. 2d 37 (2d Cir. 1958) 32

NLRB v. *Caroline Mills*, 167 F. 2d 212 (5th Cir. 1948) 44

NLRB v. *Condenser Corp.*, 128 F. 2d 67 (3d Cir. 1942) 21

NLRB v. *Deena Artware, Inc.*, 361 U. S. 398 (1960) 16, 21, 26, 34

NLRB v. *Major*, 296 F. 2d 466 (7th Cir. 1961) 40

NLRB v. *McCatron*, 216 F. 2d 212 (9th Cir 1954) .. 32

NLRB v. *Missouri Transit Co.*, 250 F. 2d 261 (8th Cir. 1957) 40, 42

NLRB v. *Neiderman (Star Baby)*, 334 F. 2d 601 (2d Cir. 1964) 41, 43

NLRB v. *New England Web, Inc.*, 309 F. 2d 696 (1st Cir. 1962) 41, 43

PAGE

NLRB v. *New Madrid Mfg. Co.*, 215 F. 2d 908 (8th Cir. 1954) 44

NLRB v. *Norma Mining Corp.*, 206 F. 2d 38 (4th Cir. 1953) 39

NLRB v. *Pittsburgh S. S. Co.*, 340 U. S. 498 (1951) 30

NLRB v. *Preston Feed Co.*, 309 F. 2d 347 (4th Cir. 1962) 40, 42

NLRB v. *Savoy Laundry Inc.*, 327 F. 2d 370 (2d Cir. 1964) 40, 42

NLRB v. *Walton Mfg. Co.*, 369 U. S. 404 (1962) ... 30

Ozark Dam Constructors, 99 N. L. R. B. 1031, mod. 203 F. 2d 139 (8th Cir. 1953) 32

Press Co. v. *NLRB*, 118 F. 2d 937 (D. C. Cir. 1940) 22

Price Valley Lumber Co., 106 N. L. R. B. 26 32

Renton News Record, 136 N. L. R. B. 1294 32

Royal Oak Tool & Mach. Co., 132 N. L. R. B. 1361, enf'd 320 F. 2d 77 (6th Cir. 1963) 31

Royal Plating & Polishing Co., 148 N. L. R. B. No. 59, 57 L. R. R. M. 1006 (August 27, 1964) 43

Charles Rubenstein, Inc. v. *Columbia Pictures Corp.*, 176 F. Supp. 527 (D. Minn. 1959), *aff'd* 289 F. 2d 418 (8th Cir. 1961) 36

SEC v. *Chenery Corp.*, 318 U. S. 80 (1943) 29

Somerset Classics, Inc., 90 N. L. R. B. 1676, *enf'd* 193 F. 2d 613 (2d Cir.), *cert. denied* 344 U. S. 816 (1952) 32, 33

Southport Petroleum Co. v. *NLRB*, 315 U. S. 100 (1942) 27, 39, 44

Teamsters Union (Polar Water Co.), 120 N. L. R. B. 155 32

Technograph Printed Circuits, Ltd. v. *Epsco, Inc.*, 224 F. Supp. 260 (E. D. Pa. 1963) 36

United Fruit Co., 134 N. L. R. B. 287, rev'd sub nom. *McCulloch* v. *Sociedad Nacional*, 372 U. S. 10 (1963) 32

PAGE

Universal Camera Corp. v. *NLRB*, 340 U. S. 474 (1951) 29, 30

Winn & Lovett Grocery Co., 115 N. L. R. B. 1676 ... 32

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Encyclopedia Britannica (14th ed.) 16

Phelps, The Role of Factoring in Modern Business Finance (1956) 16

Social Security Regulations

§ 31.3111-4 36

§ 31.3121(d)-2 36

Unemployment Insurance Reporter (CCH) 36

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

TEXTILE WORKERS UNION OF AMERICA, *Petitioner*, v. DARLINGTON MANUFACTURING COMPANY, DEERING MILLIKEN, INC., DEERING MILLIKEN & COMPANY, INC., and NATIONAL LABOR RELATIONS BOARD.	Nos. 37 and 41
NATIONAL LABOR RELATIONS BOARD, *Petitioner*, v. DARLINGTON MANUFACTURING COMPANY; DEERING MILLIKEN, INC.; DEERING MILLIKEN AND COMPANY; and TEXTILE WORKERS UNION OF AMERICA, AFL-CIO.	

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR DEERING MILLIKEN, INC.

Questions Presented

Darlington Manufacturing Company (hereinafter "Darlington"), a textile company owning one mill, was confronted in mid-1956 with continued marginal earnings and a projected operating loss. It was owned 41 percent by

Deering Milliken, Inc.,[1] 28 percent by certain members of the Milliken family group, and the remaining 31 percent by miscellaneous public shareholders. Following a representation election, which was won by the Textile Workers Union of America (hereinafter the "union"), Darlington dissolved its corporate existence and completely liquidated its affairs. The National Labor Relations Board (hereinafter the "Board") found that this action would not have been taken "but for the protected organizational activities" of the employees (R. 8).[2]

The questions presented are whether in these circumstances (1) Darlington's complete and final withdrawal from business was a violation of the National Labor Relations Act and, (2) if not, whether Darlington's withdrawal from business, even though final and complete, was a violation of the Act because of relationships alleged to exist between Darlington, on the one hand, and Deering Milliken as well as certain other corporations, on the other.[3] The first question will be argued by Darlington's counsel.

STATEMENT

The acts that the Board held constituted unfair labor practices were committed solely by Darlington. Deering Milliken was held responsible to remedy Darlington's acts,

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[1]In this brief "Deering Milliken" means Deering, Milliken and Co., Inc. which, in June, 1960, was merged into the Cotwool Manufacturing Corporation, the name of which was then changed to "Deering Milliken, Inc." See the trial examiner's Second Supplemental Intermediate Report, esp. at R. 235-36.

[2]Reference to the materials involved in these cases will be made as follows: references to the record by page (e.g. R. 8); references to the briefs by party (if necessary) and page (e.g. NLRB Br. 48 or p. 48); references to the transcript of the hearings before the trial examiner by transcript page (e.g. Tr. 3521).

[3]The union raises two further questions. These will be briefly discussed in Point III, at pp. 43 to 45, *infra*.

not because of any participation therein, but on the theory that the relationships between the two companies were such that they, together with others, constituted a "single employer".

Although the court below did not review the conclusions and findings of the Board with respect to these relationships, a statement of the relevant facts is essential to a correct understanding of the questions of law presented. Hence, we set forth below a statement of these facts that is more precise than the statements found in the briefs of petitioners.

A. Ownership of Darlington Stock

Deering Milliken has never owned a majority interest in Darlington. Although Darlington was organized in 1883, it was not until 1937 that Deering Milliken acquired a single share of Darlington stock. At that time, during Darlington's reorganization under Section 77B of the Bankruptcy Act and as Darlington's largest creditor, Deering Milliken was issued Darlington stock in exchange for its debt (R. 391). According to the record, at the time this case arose Deering Milliken still held the 41.4% it had acquired in 1937.

Roger Milliken, with the three other members of his immediate family, owned 6.4% of Darlington's shares (R. 1310). He also owned, with members of his immediate family, about 20% of the shares of Deering Milliken (R. 438). A larger group, described as the "Milliken family" and defined in the record (R. 1308) as the lineal descendants of Seth Milliken, owned stock in Deering Milliken and also in certain other textile companies. The "Milliken family", however, was not the small tightly-knit group of two or three persons usually found in the single employer cases. In 1959, it consisted of

one estate and 27 individuals[4] and since then has more than doubled.

Darlington had a substantial bloc of "outside" stockholders, i.e., persons not connected with the Milliken family or any of the other corporations. These persons numbered over 200 (R. 432-33) and owned 46,000 or 31% (R. 1310) of Darlington's shares. Three-fourths of these stockholders were represented at the October 1956 meeting at which Darlington's liquidation was voted (R. 1292-1300). 134,911 shares out of a total of 138,685 voted were voted in favor of the resolution to liquidate (R. 1265), meaning that, at the minimum, 92% of the "outside" stock approved the resolution. The largest outside stockholder, Henry Simpson, who owned directly or beneficially 20,000 shares (R. 1214), spoke in favor of the liquidation motion (R. 434). Simpson's representative on Darlington's board, Lyles, had previously voted for liquidation at the directors' meeting in September.

This was not a case in which the Milliken interests forced dissolution of the mill over the objections of the substantial minority stockholder group; the latter almost unanimously supported the decision.

The Board reversed the trial examiner and held (R. 23) that seventeen other mill corporations in which members of the Milliken family owned direct or indirect interests were also part of a "single employer" unit. These mills are frequently referred to in the record and will be here as the "Deering Milliken mills", which means that all of them used Deering Milliken as their factor and sales agent. The

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[4]Roger Milliken, in an affidavit of February 5, 1959, filed in support of a motion before the trial examiner to dismiss the complaint against him, acknowledged the accuracy of the complaint's allegations that the lineal descendants of Seth Milliken owned a majority of Deering Milliken and Cotwool stock and added (¶ 11):

> "This group is comprised of one estate and 27 individuals, of whom I am but one. Moreover, the interest of three of the great great grandchildren, who are minors, is represented by an individual and a corporate bank trustee."

Board found (R. 23-24) that while the Milliken family owned, directly or indirectly, a majority interest in each of these mills, outside stockholders owned about 45% of the Hartsville Cotton Mill (R. 1309), the mill geographically closest to Darlington, and from 12% to 44% of the "affiliated" corporations (R. 1309-10). Shares of stock in each of the cotton mills were regularly quoted and sold by securities dealers in the Carolinas (R. 1310).

B. Deering Milliken's Past and Present Role in this Case

In October and November, 1956, following public announcement of the directors' recommendation that Darlington be dissolved, the union filed a charge against "Darlington Manufacturing Company, Roger Milliken, President, and Deering Milliken & Company, Inc." (R. 1241). However, the Regional Director refused to issue a complaint against Roger Milliken and Deering Milliken. Consequently, the complaint issued only against Darlington. Further union efforts at that time to draw Deering Milliken into the case by deposition, by subpoena, or by complaint also did not succeed (R. 49-50). At the 1957 hearings on the complaint against Darlington, the union made an offer of proof in which it asserted, *inter alia*, that Darlington was a unit in a textile chain and that, far from having permanently gone out of business, Darlington was only another "runaway plant" (R. 296-302), whose production was transferred to and absorbed by other Deering Milliken mills (R. 302). The proof was excluded and Darlington was the only respondent covered by the first intermediate report (R. 43). The examiner found that Darlington had violated the Act by closing its only mill but, inasmuch as it had not been shown that Darlington would have continued to operate its mill for any definite additional period, he concluded that *any* financial assessment would be punitive (R. 45).

When the case came before the Board in 1957 on exceptions by all parties to this report, the Board majority ordered a remand for the taking of evidence as to the union's claim that Darlington's operations and labor relations were controlled by Deering Milliken. The two dissenters objected that this evidence need not be considered until the Board first decided whether a violation by Darlington had occurred (119 N. L. R. B. 1069).

Darlington's and Deering Milliken's files were then made available to Board and union counsel. From thousands and thousands of documents, 2600 items were selected for further study and analysis (R. 511), and General Counsel introduced about 400 of these in evidence. From these the trial examiner selected about 175 for discussion, on the basis of what he considered General Counsel's "stronger" suggestions of single employer status (*e.g.*, R. 165).

Under this approach, evidence tending to disprove single employer status was either ignored or minimized.[5] Consequently, the examiner's report is not a comprehensive examination of how Darlington's business was actually run, but only a critique of certain documents and testimony selected by the Board's General Counsel to support his

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[5]Thus, respondents were asked to produce handbooks issued to employees at Darlington and some of the other Deering Milliken mills. These proved to be different in format and content. They contained no reference to Deering Milliken (except for casual identification as "our selling agent," which "sells the goods we produce"), and an organization chart did not even refer to the position of president (then filled by Roger Milliken) but described the treasurer or vice president as the head of each company (R. 1237-38). Yet the trial examiner, although reporting on the question of external control of Darlington's labor relations, gave only scant attention to the absence of any statement to the employees about a connection with the Deering Milliken "chain," and instead simply noted that "the dissimilarities [among these handbooks] are significant" (R. 133-34).

argument that Darlington was controlled by Deering Milliken. A more balanced presentation would reveal more clearly the insubstantial basis for the Board majority's reversal of the trial examiner.

The purpose for which these documents and the testimony was offered was, by consent of all parties, limited to the issue of Deering Milliken's duty under the Act to *remedy* Darlington's unfair labor practices. No evidence was to be taken as to motivation, or as to whether a violation of the Act had occurred (R. 512; Tr. 3527). No party later excepted to the trial examiner's statement "that the remanded question of single employer status has been presented in connection with the question of remedy rather than for [a] possible finding of violation by other, if related, corporations" (R. 110; see also R. 512). Any evidence considered irrelevant to remedy, because primarily concerned with violation, was excluded.[6]

The trial examiner's report of nearly 50,000 words found that the "single employer" doctrine did not support the issuance of an order against Deering Milliken. The examiner held (R. 194):

> "Clearly (in this situation I do not hesitate to use the term) no single employer status has been shown here".

The union thereafter requested, and the Board granted, a second remand for the purpose of taking newly-discovered evidence. Examiner Buchanan held a third hearing and

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[6]For example, Deering Milliken's counsel sought to elicit from Roger Milliken a denial or explanation of a statement that he would not reopen the plant as long as a "hard core" of workers supported the union. Objection was made that this did not relate to remedy, and was sustained by the trial examiner (R. 1234-36). Yet this conversation is repeatedly emphasized, *e.g.*, in the Board's decision (R. 25) and its brief (p. 8).

concluded that the new evidence did "not affect the findings made concerning single employer status" (R. 239).

On appeal, the Board held, 3-2, that Deering Milliken, Darlington and the seventeen other mill corporations in which the Milliken family had an interest together constituted one "complex" (R. 24), a term nowhere defined but apparently a unitary enterprise in which, like a general partnership, each of the members is liable for the acts of the others. The majority held (R. 23):

> "It is now well established that for two or more legal entities to constitute a 'single employer' for purposes of assessing liability for unfair labor practices it must be shown that there was a sufficient degree of common ownership and common control of labor relations and operations so that it may be said that they are engaged in a common enterprise. In our opinion the evidence fully supports a finding that Darlington and Deering-Milliken and its affiliated corporations meet this test."

Member Leedom, dissenting, adopted "the reasons indicated by the trial examiner" with special emphasis on the "absence of common ownership within the meaning of the decided cases" (R. 34). Member Rodgers, also dissenting, similarly held that the burden of proof had not been sustained on this issue. He emphasized (R. 35) that potentiality of control is not an acceptable substitute for actual control as an ingredient of the single employer rule.

C. Darlington was Not A "Runaway Plant"

The majority of the court below declared (R. 1899-1900):

> "[The] sale [of Darlington] was concededly entire, bona fide and irrevocable. The Trial Examiner

> demonstrated beyond debate that Darlington was not a 'run-away' plant—that is, a plant having another existence in another form—finding that Darlington was not hidden among the other Milliken corporations. No disagreement with this finding was or on substantial evidence could have been, expressed by the Board."

Yet the amicus (AFL-CIO) says flatly that "The Darlington production was simply transferred to other Deering-Milliken mills" (p. 13). And the Board's brief (deserting the Board's *decision*) now says that this "may well have been" the case (p. 21; see also TWUA Br. 6).

The runaway plant claim originated with the union's 1957 offer of proof, in which it alleged that Darlington had sold a large part of its machinery and equipment to the other Deering Milliken mills (a claim later abandoned) and that its production had been absorbed by those other mills, with the result that there was "no depletion in the type or amount of fabrics available for sale by [Deering Milliken]" (R. 302). The question was examined exhaustively at the 1958 hearings, the trial examiner flatly concluding that there was no "transfer of accounts, of constructions [*i.e.*, fabrics] manufactured, or of styles to another mill when Darlington was liquidated" (R. 177).

With its closing impending in October, 1956, Darlington had to make efficient arrangements to "tail out" its production on future contracts, some running well into 1957. On some contracts, Oeland, Darlington's treasurer and chief executive officer (R. 120), was successful in persuading the customer to cancel by paying an allowance (Tr. 2835). On others, the contracts were assumed and performed by non-Deering Milliken mills. In a few instances, Darlington did turn for help to other carded print cloth mills served by Deering Milliken and several agreed to take over these contracts at Oeland's request. In one instance, the

other Deering Milliken mill exacted from Oeland a penalty of two cents per yard (R. 1212). After reviewing all these post-closing transfers, the trial examiner concluded (R. 177), "There is no basis for concluding that the transfers favored other Deering Milliken mills."

As the trial examiner noted (R. 177), if Darlington had been truly a member of a chain, the mill would have shut overnight, with unfilled orders supplied by other units in the chain. Instead, he concluded that "there is no proof that Darlington's products, in their type *or* amount, were compensated for and provided any addition to what would otherwise have been the other Deering Milliken mills' production" (R. 178).

Deering Milliken could not turn around and replace Darlington's lost production with substitute production from another cotton print mill. For example, Darlington had been producing a 109 x 58 broadcloth for a very important customer; when Darlington closed that customer took its business elsewhere; the record shows that it was at least six months before any other Deering Milliken mill would be in a position to produce this broadcloth for sale on the open market (R. 956). Moreover, the ten buyers who in 1956 were Darlington's largest customers, accounting for 55% of its production, bought through Deering Milliken in 1957 almost 9 million yards less of the fabric constructions within the general area of Darlington's products (R. 959-60). Between the same two years, there was a reduction in the number of spindles at the Deering Milliken cotton mills, and a corresponding drop in spindle activity, greater than that of the industry at large (R. 954-55). In terms of total poundage of yarns produced, the mills other than Darlington produced slightly more poundage in 1957 than in 1956, but this resulted from the installation of new high-speed equipment, and the total yarn produced by the combined

mills was still less than it had been when Darlington was in business (R. 952-54).

The examiner expressly ruled (R. 177-78), and the Board by adopting the examiner's findings (R. 4) held, that Darlington was not a runaway plant. These findings were considered and affirmed by the Court of Appeals. That court held that Darlington's demise was not provisional, its mill was not transplanted elsewhere, and its sale was concededly entire, bona fide and irrevocable (R. 1899-1900). It went on to hold that, even if the Board had disagreed (as it did not) with the examiner's finding that Darlington was not a runaway plant, that conclusion would not have been supported by substantial evidence (R. 1900). The union did not seek certiorari on this point. Thus, for this Court's purposes, this issue is irrevocably settled.

D. Deering Milliken's "Control" of its Mill Principals

1. The "Related" Mills

The Board's treatment of this subject (pp. 13-21) is headed, "The Interrelation between Darlington and the Other Deering-Milliken Plants", paralleling the treatment in its decision (R. 24-27). Elsewhere the Board had candidly admitted that the relations of the mills other than Darlington to Deering Milliken is not covered in the record.[7] While there is considerable proof in the record of the participation of Roger Milliken in the management

[7] In its brief to the Court of Appeals in *Deering Milliken, Inc.* v. *Johnston*, 295 F. 2d 856 (4th Cir. 1961), the Board, appealing from a district court injunction against a *second* remand of the case to the trial examiner, explained that it needed additional facts as to the other mills because of the "paucity of the evidence on the rights and relationships served by the other mills in this complex corporate structure" (p. 6, n. 8) and because "the evidence taken at the original remand hearing was not directed to the relationship between Deering Milliken and the other textile mills besides Darlington" (p. 8, n. 10).

of the various companies of which he was president, there is virtually no evidence of either Deering Milliken's or Darlington's relations with the other mills. The Board's decision and its presentation here attempt to fill this gap by assuming that Deering Milliken's relations with the other mills were identical to its relations with Darlington.

The hearings on remand in 1958 had been confined to the Deering Milliken-Darlington relationship. The examiner had excluded all evidence bearing on the relationship between Deering Milliken and any mill corporation other than Darlington.

As the hearings were about to close, counsel for General Counsel asked counsel for Deering Milliken to stipulate that the relationships between Deering Milliken and each of the operating mill corporations (other than Darlington) were substantially the same as, or were similar to, the Deering Milliken-Darlington relationships. This request was refused on the ground that if these further relationships were to be the subject of the remand, it could not be done by stipulation but only by the presentation of specific evidence and only after the trial examiner or a court had approved the propriety and relevance of such an excursion.

As the examiner's report relates (R. 105), the General Counsel requested that the hearing be kept open for three weeks so that he might consider the advisability of "further investigation of the relations of the other companies; along with or parallel to what (he had) attempted to do here in regard to Darlington," and of a request to the Board for clarification of the scope of the remand order. No request for extension of the hearing was forthcoming and, by prior arrangement, it was closed on November 13, 1958.

2. Darlington's Independent Management

Deering Milliken has been selling textiles and factoring the accounts of textile producers for nearly 100 years (R.

579). In its New York City main offices and seven branch offices, it (and a subsidiary) employed 560 people in 1956-1958 (R. 514, 573). It was not then a manufacturing company (cf. n. 1, p. 2, *supra*). Deering Milliken sold the goods produced by the mills and factored the accounts receivable from their customers. Darlington paid Deering Milliken the standard industry print cloth commission of 2½% for these services (R. 582).[8]

One of the practices peculiar to the textile industry is that the operating head and chief executive officer of a textile manufacturing company is not the president, as in most businesses, but the treasurer (R. 583; see R. 120). The president of such a company occupies, in effect, the position of chairman of the board. This was true of Darlington: the company's by-laws provided that the treasurer was responsible for "all financial and general business of the company under supervision of the Directors" (R. 1130).

While the president of Darlington was Roger Milliken, also president of Deering Milliken, the treasurer and, as such, concededly the chief executive officer (R. 120) was James M. Oeland. Oeland held no position in Deering Milliken or in any other mill company (Tr. 76). The Board here seeks to make it appear that Roger Milliken was the principal functioning executive of Darlington and of all the other mills, retaining all "major decisions" exclusively in his hands (pp. 18-21), but the proof was to the contrary.

Oeland entered the textile industry in 1927 and remained in it for 30 years (R. 1189-90). After working at various other companies, in 1951 he was offered the treasurership of Darlington (R. 1192). He was told that he would be

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[8]The statement made by the dissenters in the Court of Appeals (R. 1904, n. 5) that Deering Milliken's service charges were "substantially less" than those of independent factoring agents is not supported by the record.

responsible for "its costs, its employment of personnel, its purchase both of raw materials and supplies and . . . its sales" (R. 1192). It was made perfectly clear that Oeland was to be "in complete charge" and that "whether or not he sought advice, the responsibility for decisions would be his own" (R. 139).

Darlington's organization chart, like that of other textile mills, showed the treasurer, not the president, at the apex of the corporate pyramid (R. 1132, 1237). While Oeland was, of course, responsible to his Board of Directors, needing approval on such matters as capital expenditures (R. 120, 1136-37), he rarely saw Roger Milliken or any of his fellow directors other than at two or three formal meetings a year (R. 1195, 1198). In countless administrative matters, he acted independently and without consultation with Roger Milliken or others. With the advice of local counsel, Oeland handled the stock records and the transfer of 500 to 1000 Darlington shares annually (R. 591, 1141, Tr. 859). He set up Darlington's bank accounts, and signed the checks. Nobody at Deering Milliken or the other mills could sign against Darlington's bank accounts (R. 1140). He changed Darlington's systems of accounts[9] to match methods he had learned years earlier at other mills (R. 590, 1194).

All the hiring and firing of employees was done by Oeland (R. 120). Neither in the handbooks issued to them, which showed him as the company's principal executive (R. 1131-32, 1237-38), nor in any other way were Darlington's employees told that they were employed by a chain. The examiner noted (R. 127), "there is no evidence

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[9]Deering Milliken's treasurer, Minot Milliken, testified that he not only did not have copies of the accounts kept by Oeland at Darlington (R. 590) but was not even acquainted with the form in which such records were kept (R. 130).

that the employees of Darlington ever considered or referred to themselves as employees of Deering Milliken or of any of the other mills or mill corporations." Even in the all-important areas of wages—for labor costs meant the difference between survival and failure for a textile mill—Oeland acted independently. In 1955, Oeland decided upon, and put into effect, a smaller increase at Darlington than was given by the other mills (R. 1204-07). Oeland and his management at Darlington had sole control over prices. The function of Deering Milliken and its salesmen was to reach a price acceptable both to the mill and the customer (R. 592). Sales were primarily to "converters," i.e., concerns which buy griege goods and "convert" them by dyeing and finishing or printing (Tr. 1509), thus preparing them for cutting and sewing. But goods never were sold without the agreement of the mill treasurer, who reserved the right to accept or reject an order (Tr. 1567), unless (rarely) a higher price than that set by the treasurer, Oeland, was obtainable (Tr. 1708).

Roger Milliken was, of course, Oeland's superior and received regular reports from him. The Board repeatedly refers to these reports as evidence of Milliken's control of Oeland. However, while Oeland regularly reported the mill's progress in all phases of its operation (e.g. R. 1824, 1829, 1836, 1840, 1843 and 1857), there is virtually no evidence that he received any instructions from Roger Milliken (or anyone else) dealing with conditions revealed by his reports. When the union moved into Darlington and began its efforts to organize the mill, Oeland, after an initial telephone call apprising Roger Milliken of the development, dealt with the situation on his own responsibility and initiative.

The functional division between Darlington and Deering Milliken is shown by Oeland's testimony (R. 1210):

> "[Deering Milliken] wanted to sell goods. That was their job. My job was to make them and sell them at a profit. . . ."

Oeland's compensation included 2 percent of the mill's net profit (Tr. 1743), which gave him an incentive to make Darlington succeed. Oeland was constantly seeing to adapt Darlington's product line to market developments—even if that meant direct competition with other Deering Milliken mills already producing those products (R. 134) and Deering Milliken and its salesmen did nothing to reduce this inter-mill competition (R. 135). As the examiner noted (*ibid.*), such product competition would not exist in an integrated, single employer operation where each "department" usually performs a particular function. Cf. *NLRB* v. *Deena Artware, Inc.*, 361 U. S. 398, 401 (1960).

3. Deering Milliken as Sales Agent and Factor

Deering Milliken was not Darlington's parent; for example, no consolidated audited statements were ever prepared covering both Deering Milliken and Darlington (R. 1217). The relationship was a business one. Textile mills do not generally market and sell their produce. The selling function has been traditionally performed by a separate enterprise called a sales agent and factor.[10] Deering Milliken

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[10]The factor has been of special importance in the merchandising of textiles in the United States, "where he has developed into a peculiar and specialized type of commercial (and even investment) banker, whose loans are limited to the one specific field in which he is skilled." 9 Encyc. Britannica 28 (14th Ed.). "The modern factor supplies his client with information and advice not only on financial problems, but also on design or styling of product, marketing considerations, production, and sales." Phelps, The Role of Factoring in Modern Business Finance (Commercial Credit Co. 1956, quoted at R. 1812). The same work lists a number of supplemental services provided by the factor to its mill client, including credit information, market studies, management consulting, advice on machinery replacement, suggestions on taxes, pensions etc.

functioned as Darlington's exclusive sales agent and factor. The services it rendered to Darlington were similar to those rendered by competing factoring houses to their mill principals (R. 1222).

The Board found (R. 25) that Deering Milliken "exercised complete control" over the sales of all the "related" mills. This finding was so clearly devoid of support in the record that Judge Bell's dissenting opinion in the court below did not adopt it and it is not defended in the Board's brief (*cf.* p. 40).[11] To the contrary, the record shows that factors and sales agents performed identical services for mills in which they were and were not financially interested (R. 205). The Board's present claim seems to be that Deering Milliken's "control" was exerted through administrative channels, particularly through its tax and insurance departments and through affiliated service and research corporations.

Deering Milliken's Tax Department (NLRB Br. 14; TWUA Br. 24) was headed by a public accountant (C. W. Kable) with a professional staff (R. 630). Kable had been made an officer of each mill, serving without compensation, so that he would have the right to sign tax returns (R. 160, 632-33). This department provided Darlington with services not available to it internally. Oeland quite often solicited Kable's "opinion" and "advice" in these specialized

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[11] In the thousands of documents that passed between Darlington and Deering Milliken, one was found and advanced by general counsel as evidence of Deering Milliken control over production at Darlington. The sales supervisor in New York wrote Oeland that he would get "clearance" from another department of Deering Milliken so that Darlington might continue to make a certain fabric (R. 170). The trial examiner, not without some difficulty, finally concluded that this letter was an aberration, not reflecting a normal course of dealings and not probative of control over sales (R. 170-71). He might also have observed that this was the only letter of its kind, and have contrasted it with others in which Oeland rejected suggestions from New York such as that he begin producing 80-square print cloth (R. 1377).

fields and expressed warm appreciation for his help (R. 1402, 1385-94). Deering Milliken's competitors in the factoring field also gave advice to their mill principals with respect to tax matters (R. 1222). The Tax Department functioned much as an independent accounting firm with the ultimate authority over the settlement of tax matters remaining in Oeland's hands at Darlington (R. 633, 160).

Similarly, Deering Milliken's Insurance Department (NLRB Br. 15; TWUA Br. 24) supplied a cost-saving cooperative service for the mills. Each mill decided what insurance it needed, and not all purchased the same kinds (R. 677-78, 681). This arrangement enabled Darlington to obtain higher coverage than it could have separately purchased for the same cost (R. 679-80). Deering Milliken was not covered under any of these policies (*e.g.*, it had a workmen's compensation policy different from that of the mills, R. 682), with the exception of a group travel risks policy which covered executives of both Deering Milliken and the mills.

Deering Milliken Service Corporation (NLRB Br. 15; TWUA Br. 21-23, 25) was a wholly owned subsidiary of the manufacturing corporations. Each mill corporation owned one share for each of its mills (R. 118, 687). Its directors were six mill treasurers, its president (Lowry), and Roger Milliken (R. 723). It operated as a central clearing house for information and a reservoir of skilled advice and assistance from which the mills could draw as needed. In the Board's own words (p. 15), DMSC made "recommendations" to the mills; it did not order or direct, for indeed it was itself owned by the mills, and did not participate in the sales and factoring activities of Deering Milliken. The mills were not required to avail themselves of DMSC's services and could terminate their service agreements with

it at any time on proper notice (R. 118, 686). There is no evidence to support the Board's claim (R. 26) that Deering Milliken (which owned no interest in DMSC, R. 723) exercised control over DMSC, let alone over Darlington through DMSC.

One DMSC department was concerned with "placement", meaning that its job was to attract supervisory and technical trainees for the mills. The Board says (p. 16), erroneously, that prospective employees were encouraged to look upon all the corporations as a single unit; in fact they were told the contrary.[12] Similarly, the Research Corporation (p. 17) (in which Deering Milliken held a small interest) was the means by which the mills pooled their research effort; it incidentally performed the functions recited by the Board with respect to maintenance, production goals, and equipment standardization at the mills.

The trial examiner found no significance in the use of collective nouns, such as "the DM mills" or "Mills with Milliken". The latter phrase was used in an advertising brochure on which the Board lays heavy stress in its decision (R. 27) and brief (p. 18).[13] Phrases like these, despite their legal inexactness, were commonly used even at the hearings, for there was no short alternative (Tr. 1468; R. 585). Such collective phrases were common both in the industry and elsewhere. The mills were not strangers to

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[12]Revealing in this connection is a set of instructions given to interviewers to describe supervisory employment opportunities at the Deering Milliken mills (R. 1642-43): "Deering Milliken Sales Agent —28 units with 25 in South;" "Mills have kept corporate identities and operate as separate units therefore, we have advantages of large and small organization; . . . ."

[13]This brochure was prepared as a promotional piece for the trade at a New York sales meeting, to interest potential customers in the woolen, worsted and blended fabrics (not the print cloths made by Darlington) sold by Deering Milliken. Excerpts are found at R. 1336-

each other or to Deering Milliken. Where precision of reference was required, such as legal papers (R. 1229) or sales contracts (R. 1230), the exact names of the corporations were given and their independent status clearly delineated. For example, the cotton sales notes explicitly stated that they were accepted by Deering Milliken "specifically designated as a selling agent" and "acting as agent for" the particular mill whose products were being sold (R. 217, 586, 1230).

Witnesses pointed out that "Cannon Mills" was used throughout the trade to describe mills selling through Cannon (R. 1224-25), whether owned by Cannon or not, and that "AMC Stores" described a group of independent stores or agents that pooled their purchasing through an associated corporation (R. 1227). The examiner found some analogy in the Bell System companies (R. 210-14), and it was also pointed out (R. 206) that "CBS Affiliates" refers to a cluster of independent companies affiliated with the network selling their time and facilities on a national basis. The examiner observed that "interrelationship [among the mills] is shown; but not interdependence, and certainly not control" (R. 172). No matter how deeply the record is probed on the question of control, this conclusion cannot be seriously disputed.

The close cooperation that generally characterizes the relations between textile manufacturer and sales agent does not depend on the presence or absence of a common element of ownership but on the mutuality of interest and the mutual interdependence arising from the respective func-

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41, and the exhibit is discussed at length by the examiner (R. 216-18). The brochure also refers to the mills as "the mills served by Milliken" (R. 216), "associated with Deering Milliken" (R. 1341), and "new mill affiliates" (*ibid.*), and to Milliken as "one centralized buying office" (R. 217, 1339), all phrases which are inconsistent with the Board's findings.

tions they perform within the industry. The relationship between these mills, and of each with its common sales agent, is entirely different from that envisioned by the tests of vicarious liability enumerated by this Court in *NLRB* v. *Deena Artware, Inc.*, 361 U. S. 398 (1960). Those tests are not satisfied merely by a showing that several employers sacrificed a degree of independence, each in favor of the others, out of motives of enlightened self-interest. It was not enough for the Board to determine that they pooled their efforts in the solution of mutual problems, or banded together for the common good, or even (to a very limited extent) drew from a common reservoir of management personnel.

E. Darlington's Independence in Labor Relations

Oeland testified without contradiction that he never discussed the subject of Darlington's labor relations with anyone outside the company (R. 1199-1202). The examiner found that labor relations at the various mills, even when parallel, were "independently determined" (R. 187). Yet the Board found that Deering Milliken "exercised control over the labor relations of all of the corporations, including Darlington", and that this control was exercised "primarily through the person of Roger Milliken" (R. 25). Conceding that the "details of day-to-day personnel relations may have been, of necessity, conducted at the mills" (R. 25; also NLRB Br. 27 n. 23), the Board found that "major decisions" were made by Roger Milliken, and accordingly "Deering Milliken must assume responsibility for control of Darlington's labor relations" (R. 25).

The Board's conclusions in what it aptly described (R. 24) as this "crucial area"[14] were based upon eight specific examples said to be found in the record.

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[14]Citing *Dearborn Oil & Gas Corp.*, 125 N. L. R. B. 645. The "degree of control over the labor relations" was described in one of the earliest single employer cases as "important". *NLRB* v. *Con-*

Much of the evidence is not only equivocal but negative, *e.g.*, Roger Milliken is said to have "received reports" on various topics and to have "obtained additional details" by personal visits and correspondence (NLRB Br. 19). There is no evidence that he ever did anything about these subjects; these are simply matters included in regular operating reports. Another group of instances is characterized as the making of "detailed proposals and recommendations" (*id.*, 20); these are entirely consistent with the examiner's finding (R. 121) that Milliken "could plan, urge, and exhort; [but] he did not control". His "suggestions" were only that, and the recipients (the mill managements) were free to disregard them as Oeland frequently did (R. 124) if they did not think them useful. (See, *e.g.*, R. 1010-11, 1027, 1037, 1061, 1729, 1748 and Tr. 3521.) They were, as the trial examiner observed (R. 138), "more nearly precative than authoritative" and they lend no support to the finding that Roger Milliken controlled labor relations.[15] Finally, petitioners make no claim that to the very limited extent that Roger Milliken participated in an advisory role in the management of

denser Corp., 128 F. 2d 67, 71 (3d Cir. 1942); see also *Press Co.* v. *NLRB*, 118 F. 2d 937 (D. C. Cir. 1940). In *Bachman Machine Co.* v. *NLRB*, 266 F. 2d 599, 602 (8th Cir. 1959), the court reversed the Board's single employer finding, primarily on the issue of common control of labor policies, although the president of both companies actively participated in their union negotiations and the manager of one company was required to consult the president on all labor matters. See also *Bethlehem Steel Co.* v. *NLRB*, 120 F. 2d 641 (D. C. Cir. 1941).

[15] The Board cites only one instance (p. 20) which it claims involved direction rather than recommendation by Roger Milliken. Allegedly, Milliken "directed the mills to limit the number of spare hands." (*ibid.*) The proof showed, to the contrary, that Milliken merely inquired as to the number of employees working less than 40 hours per week (R. 1740) and as to whether having such employees was a desirable practice (R. 1088). The mill treasurers had complete authority to continue their existing spare-hand policy if they so chose (R. 1089).

Darlington, he was doing so as president of Deering Milliken rather than as president of Darlington.

The Board concludes its discussion of labor relations control by claiming that Roger Milliken determined the mills' policy toward unionization (pp. 20-21). As to Darlington, however, the record showed that he only visited the mill on the three or four occasions a year when directors' meetings were held (R. 1195). In particular, Roger Milliken played no part in the company's response to the union's campaign. During the two months immediately preceding the election, he was traveling and was not even in South Carolina (R. 1092). It was Oeland, along with Darlington's local counsel, who conducted Darlington's effort to win the election (R. 1776). Occasional references were made to the topic in Oeland's weekly "newsletters" to Roger Milliken, which Oeland regarded as a type of personal diary or a means of "thinking out loud" (R. 1070, 1173); but Milliken gave Oeland no advice, let alone directions, on the matter (R. 1071-72).

Several weeks after Darlington's stockholders had voted to liquidate, Roger Milliken sent to the other mill managements for their information an article from the November 8th issue of "America's Textile Reporter" discussing the election. He cited the article as proof that Darlington "was negligent in its public relations" (R., Vol. V, 176). The recipients were urged to make sure that their mills and their problems were known and understood in their communities (R. 177). The Board found that this was "obviously intended as a primer to the managers of the mills in combatting union organization" (R. 25), and its brief (pp. 12-13) quotes copiously from the article, as if the fact of distribution made each and every word of the author Roger Milliken's. Roger Milliken denied endorsing or

agreeing with the views stated in the article (R. 974-82). Nothing in his two-paragraph memorandum of transmittal (R., Vol. V, 176-77) suggests otherwise; indeed, the only personal view he expressed therein was "I think the article is interesting" (*id.*, 176).

At the hearings, General Counsel made no attempt to establish that uniformity of wage and employment practices, and thus of labor relations, existed among Darlington and the other mills. Union counsel did attempt to show uniformity but soon abandoned his efforts when a clear and unmistakable pattern of non-uniformity emerged. The record indicates without contradiction that there was a substantial lack of uniformity among some or all of the "related" mills in the following matters:

(1) Wages paid on particular jobs (R. 1205); (2) Content of the same job at particular mills (R. 1154, 1200); (3) Job assignments (R. 722); (4) Shift hours (R. 1183, 722); (5) Three-shift operations, as applied to the same department in different mills (R. 725); (6) Rotation of shifts (R. 728); (7) Starting hours for shifts (R. 1183); (8) Shifts differentials or premiums (R. 1181); (9) Use of spare hands (R. 1088); (10) Allocation of industry-wide wage increases (R. 1205); (11) Seniority lists (R. 1182); (12) Written vacation plans (Tr. 3435); (13) Use of "sign-up sheets" for new employees (R. 1147-48); (14) Working conditions generally (R. 722); (15) Overall labor cost (R. 1233); (16) Group insurance benefits (R. 681) and (17) Salary payments to second hands (Tr. 2012). In short, the record reveals anything but the "thoroughly integrated, monolithic enterprise" (R. 1905) described by the dissenters in the Court of Appeals. The Board now concedes (p. 27 n. 23) that "labor conditions were not uniform in all the plants".

In this "crucial area", the Board concluded (R. 24; NLRB Br. 19) that Roger Milliken "exercised ultimate control over the labor relations of all the corporations". The Board's use of the qualifying word "ultimate" may properly be regarded as formal deference to the evidence because there was no proof that in fact Roger Milliken directly dictated, or prescribed the labor relations of Darlington or exercised any control over those relations. The Board made no finding that the asserted power was exercised but rested its conclusion on the ground that Roger Milliken had the power to control (see p. 18 n. 18) without regard to whether that power in fact had ever been exercised.

The record indicates that Darlington's supervisory personnel rarely, if ever, saw or talked to Roger Milliken. Shirley (spinning room overseer) had never talked to Roger Milliken about the union and was not personally acquainted with him (R. 489); Kinsey did not know Roger Milliken and had never spoken to him during his 16 years as a second hand (assistant overseer) (R. 497). Neither Cox (weave room second hand) (R. 500) nor Kinsaul (spinning room second hand) (R. 505) had ever talked to Roger Milliken. Against this background, it is not surprising that the examiner found (R. 66) that certain statements made by Darlington's supervisors did not reflect declarations of Roger Milliken.[16]

The examiner considered and rejected the very argument the Board is now making. He said (R. 203):

> "Managerial identity does not makes one company or branch liable for the violations of another or liable for remedy, but *common application* of a violative policy or practice does . . . [but] it has not been

[16]The Board did not pass on this finding (R. 7 n. 13).

> shown that Deering Milliken controlled Darlington's labor policies so as to be liable for the latter's violations; or that a joint policy existed under which any other corporation became liable." (Emphasis in original.)

No matter how broad a definition of the term the Board adopts, the record is still clear that Deering Milliken and its officers had nothing whatever to do with Darlington's "labor relations".

SUMMARY OF ARGUMENT

I

The Board's single employer doctrine, when used to support an affirmative order against a company which did not commit or participate in a statutory violation, can only be applied on a showing that the companies involved were "paper" corporations commonly owned by an individual or a small group. The substantial non-Milliken ownership of Darlington, and its long history as a separate and self-contained corporate entity, prevent the assertion against its stockholders, Milliken or otherwise, of liability to remedy its alleged unfair labor practices.

N. L. R. B. v. *Deena Artware, Inc.*, 361 U. S. 398 (1960), teaches that shareholders are normally insulated from the debts and obligations of the corporation. It is only when the several companies are established and operated as "largely paper arrangements that do not reflect the business realities" (*id.*, at 403) that the staggering liability assessed in this case against the owners of the enterprise can be justified.

Darlington was not a subsidiary of Deering Milliken; this was not a complicated corporate maze constructed for the purpose of minimizing enterprise liability, or of frustrat-

ing efforts to trace assets and obligations. The Milliken family ownership of Deering Milliken, Darlington and the other related corporations, even if it carried with it the potentiality of common control, was insufficiently concentrated and dominating to establish the common liability of all the companies so owned.

II.

The Board has failed to bring this case within the theory of the runaway plant cases, and has failed to find that anywhere within the so-called Deering Milliken "complex" there was merely a "disguised continuance" of Darlington. *Southport Petroleum Co.* v. *N. L. R. B.*, 315 U. S. 100, 106 (1942).

Thus, even if Deering Milliken is bracketed with Darlington under the single employer theory and is regarded as the "employer" of the Darlington workers, it did not violate the Act by permanently closing a plant.

The Court of Appeals correctly held that a multi-plant employer had the right to close down a plant, for any reason, as long as "an actual, unfeigned and permanent end of operations" had occurred (R. 1899). The multi-plant employer is in this regard on the same footing and governed by the same rules as the company owning and liquidating a single plant.

III

The union urges (1) that Darlington's shareholders be required to reconstitute and operate a cotton print cloth mill in Darlington, South Carolina and (2) that the Board erred in dismissing the complaint against Roger Milliken in his personal capacity. All eleven persons who have passed upon these contentions have rejected them. We agree with the Board (p. 3 n. 2) that neither contention is meritorious.

POINT I

THE COMMON OWNERSHIP SHOWN ON THIS RECORD IS INSUFFICIENT TO SUPPORT THE BOARD'S ORDER AGAINST DEERING MILLIKEN

The Board in its brief in this Court (p. 2) states that the question presented is whether an employer "which operates a number of separate plants under common control" commits an unfair labor practice by closing one of the plants to avoid collective bargaining and in reprisal against the choice of the employees in the plant to be represented by a union. In its petition (p. 2) the Board had said that the question was whether an employer "who owns several plants" violates the Act by such a closing. This change in the manner of stating the question can only be a studied departure and not simple carelessness in drafting.

Common ownership is an essential element in the Board's single employer doctrine both by its own decisions and the decisions of courts reviewing its orders.[17] In its decision the Board cited many of these cases and stressed that common

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[17] In *Dearborn Oil and Gas Corp.*, 125 N. L. R. B. 645, the Board reversed its trial examiner's conclusion that three corporations must be considered as a single employer for purposes of assessing responsibility for an unfair labor practice committed by one of them. The majority found no common control of operations or labor relations, but went on to say that, even if it had found such control, that would not establish the corporations as a single employer. It continued (at 647):

> "Generally speaking, in those unfair labor practice cases in which the Board and the courts have held that a legal entity may be held for the acts of another, because both constituted a single employer, it appeared that both were not only subject to common control, but also that a controlling ownership interest in both companies was held by the same individual or group of individuals. We believe that it is proper to require that both elements—common ownership and common control—coexist before we assess joint responsibility."

See also cases cited notes 19-21, *infra*.

ownership was "necessary" and "must be shown" before its single employer doctrine became applicable (R. 23-24). If the Board's theory on appeal is that common control is something less than common ownership and will suffice to make a single employer of several corporations, the theory is different from the Board's theory in arriving at its decision. That decision cannot be sustained on the basis of some other and different finding that might have been made but was not, even though that finding might have justified its ultimate conclusion. *SEC* v. *Chenery Corp.*, 318 U. S. 80, 87 (1943) Therefore we assume in this part of our argument that the Board will attempt (as it did in its petition) to sustain its decision as written, and we shall show that there was not as among Deering Milliken, Darlington and the other corporations thought to be related to Deering Milliken the kind of common ownership that has always been considered essential to the Board's single employer concept.

The court below did not reach the question of whether "single employer" status existed, since it decided the case on other grounds (R. 1901-02). Until this case, the Board's "single employer" concept[18] has been based upon a finding of three factors common to the corporations said to constitute the unitary enterprise: ownership, control of operations and control of labor relations. The last two of these make up the bulk of the present record and, as to them, this respondent contends that the proper course would be to

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[18]NLRB "single employer" determinations are not entitled to judicial deference for Board "expertise". While the Board is an agency "presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect", *Universal Camera* v. *NLRB*, 340 U. S. 474, 480. (1950), a determination that one corporation is controlled by another does not fall within that area of special skill. Courts have not hesitated in this area to exercise their function of "assuring that the Board keeps within reasonable bounds." (*id.*, at 490).

allow the Court of Appeals to review the Board's findings thereon.

Ownership, however, is in a separate category. The facts are simple, were stipulated and set forth in a single document (Ex. A-12, R. 1308-11). Here is a pure question of law ripe for decision by this Court: whether common ownership of the alleged unitary enterprise is essential to a finding of joint and several liability of the units comprising the enterprise, and, if so, whether the ownership shown on this record is sufficient to warrant the extension of Darlington's liability to Deering Milliken.

This respondent contends that, as a matter of law, there was not sufficient common ownership between Darlington and Deering Milliken to permit the conclusion that those two separate corporate entities constituted a single employer. However, if this Court finds that a lack of common ownership is not enough to preclude the application of the single employer doctrine, then the only proper course would be to send the entire question of the existence or non-existence of single employer status back to the Court of Appeals to allow it to perform its statutory function of reviewing NLRB evidentiary determinations. *NLRB* v. *Walton Mfg. Co.*, 369 U. S. 404, 408 (1962); *NLRB* v. *Pittsburgh S. S. Co.*, 340 U. S. 498, 502-03 (1951); *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474, 490-91 (1951) It is significant that the NLRB, despite a long factual discussion (pp. 13-21), does not present any single employer argument. Indeed, in its petition for certiorari, the Board conceded that the single employer issue "would appear to be open on remand" (p. 10 n. 6a).

A. The Cases Require Greater Common Ownership Than Is Here Present

The cases cited, *infra*, show that not any degree of ownership by a common source will suffice to meet this por-

tion of the single employer test; that test is satisfied only where a subsidiary is wholly owned by a parent, or where virtually all the shares of the separate corporations are held by a small group of owners.

The Board majority, reciting (R. 23) Milliken ownership of 66 percent of Darlington's shares and a majority (ranging from 55 percent to 88 percent) of the "affiliated" corporations, has found (R. 24):

> "Such stock ownership clearly satisfies the Board's requirements for a finding of 'common ownership.'"

Actually, neither Board nor court of appeals decisions discussing this question have ever assessed vicarious liability in a single employer case where the ownership interests commonly held were as diverse and diluted as here.

As Member Leedom, dissenting, noted, "there is here an absence of common ownership within the meaning of the decided cases" (R. 34). The other dissenter, Member Rodgers, noted that the fact of "single ownership" is "open to serious question" on this record (R. 35). A study of the voluminous cases, both before the Board and the courts, in which ownership is discussed reveals how far the Board majority has departed from precedent in finding that this requirement is "clearly" satisfied.

1. The Aggregate Holdings in the Commonly Owned Entities Must Closely Approximate 100%

The Board cases have assessed joint unfair labor practice responsibility against multiple entities only where the common ownership interest therein amounted to 100% or something very close to it.[19] This is true whether the re-

[19] *E.g., Mueller Industries Inc.*, 132 N. L. R. B. 469 (1 principal stockholder in both companies); *Royal Oak Tool & Mach. Co.*, 132 N. L. R. B. 1361, enf'd 320 F. 2d 277 (6th Cir. 1963) (3 persons);

lationship is a parent-subsidiary or an owner or owners holding shares in several corporations.[20]

By contrast, the Board (R. 23) could trace only 66% of Darlington's stock to a common ownership source. (Even that must be further reduced because the Cotwool holdings in Darlington must be included to bring the

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Lexington Elec. Prods. Co., 124 N. L. R. B. 1400, mod. 283 F. 2d 54 (3d Cir.) (sole owner of primary employer owned other company with another person); *Morelli Bros.*, 123 N. L. R. B. 635 (two partners owned 100% of corp.); *Teamsters Union (Polar Water Co.)*, 120 N. L. R. B. 155 (apparently identical ownership); *Danspur Co.*, 114 N. L. R. B. 40 (one man owned 100% plus 65% of other, associates owned rest); *National Electronic Mfg. Corp.*, 113 N. L. R. B. 620 ("substantially identical ownership"); *A. M. Andrews Co.*, 112 N. L. R. B. 626, *enf'd* 236 F. 2d 44 (9th Cir. 1956) (identical 100% ownership); *Price Valley Lumber Co.*, 106 N. L. R. B. 26 (identical 100% ownership); *Ozark Dam Constructors*, 99 N. L. R. B. 1031, *enf. den.* v: *secondary employer* 203 F. 2d 139 (8th Cir. 1953) (identical 100% ownership); *Somerset Classics, Inc.*, 90 N. L. R. B. 1676, *enf.* 193 F. 2d 613 (2d Cir.), *cert. denied* 344 U. S. 816 (1952) (100% ownership).

[20]No decision has visited single employer responsibility upon a parent owning less than 100% of the stock in the corporation which has engaged in the unfair practices, provided that the parent has not directly participated in those practices. *E.g., United Fruit Co.*, 134 N. L. R. B. 287, rev'd sub nom. *McCulloch* v. *Sociedad Nacional*, 372 U. S. 10 (1963); *Lykes Bros. Inc.*, 128 N. L. R. B. 606; *Industrial Fabricating Inc.*, 119 N. L. R. B. 162, enf. 272 F. 2d 184 (6th Cir. 1959); *Winn & Lovett Grocery Co.*, 115 N. L. R. B. 1676; *Libby-Owens-Ford Glass Co.*, 115 N. L. R. B. 1452, *enf'd* 241 F. 2d 831 (4th Cir. 1957); *A. E. Nettleton Co.*, 108 N. L. R. B. 1670 (1954), *enf'd* 241 F. 2d 130 (2d Cir. 1957). In *Renton News Record*, 136 N. L. R. B. 1294, where two companies owned 58% of the stock, the Board specifically noted "lack of sufficient common ownership" as a ground for refusing to find *alter ego* liability.

Of course, a finding based on less than 100% common ownership that two corporations constitute a single employer for purposes of determining the existence of NLRB jurisdiction [e.g. *NLRB* v. *McCatron*, 216 F. 2d 212 (9th Cir. 1954)] or to establish the extent of a bargaining unit [*e.g. NLRB* v. *A. K. Allen Co.*, 252 F. 2d 37 (2d Cir. 1958)] is not comparable to such a determination made for purposes of holding one corporation responsible for another's unfair labor practices.

figure over 50%, and neither Deering Milliken nor Cotwool was wholly owned by the Milliken family (R. 1308-09)). With almost one out of three Darlington shares held by an "outsider," there can be no rational basis for finding that the common ownership requirement was satisfied.

2. The Milliken Family Is Too Large a Group To Serve As a Source of Ownership

In prior cases which have involved a "group" ownership interest in two or more corporations, the group has been small and tightly-knit. Thus, in *Somerset Classics, Inc.*, 90 N. L. R. B. 1676, *enf'd* 193 F. 2d 613 (2d Cir. 1952), the "family" which owned 100% of all the corporations involved was a small unit, possibly five or six persons. Here we have a much larger group numbering over twenty persons (p. 4 n. 3), reaching into two or more generations. Moreover, different branches of the family owned varying interests in the several corporations (e.g. one branch owned shares in Deering Milliken but not in Cotwool), and this created an imbalance of ownership, sometimes leading to conflicts between the two interests (R. 1239o-1239p, 1239u).

Even if it is permissible to aggregate the holdings of the Milliken family, no prior Board case has assessed joint responsibility where ownership, much less partial ownership, was scattered over so large a group.[21]

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[21]Cases illustrating the tightly-knit groups against whom joint responsibility has been assessed are *Aluminum Tubular Corp.*, 130 N. L. R. B. 1306, *enf. den.* v. *secondary employer*, 299 F. 2d 595 (2d Cir. 1962) (2 persons owned 100% of one, 51% of other); *Carol Management Corp.*, 133 N. L. R. B. 1126 (single owner); *Field Paper Box Co.*, 130 N. L. R. B. 22 (2 persons); *Minnesota Mfg. Co.*, 132 N. L. R. B. 1398 (husband, wife, two children); *Morelli Bros.*, 123 N. L. R. B. 635 (2 persons); *A. M. Andrews Co.*, 112 N. L. R. B. 626, enf'd 236 F. 2d 44 (9th Cir. 1956) (4 persons); *Milco Undergarment Co.*, 106 N. L. R. B. 767 (president's immediate family).

B. The Board's Single Employer Finding Conflicts with this Court's Guidelines in *Deena Artware*

Judge Bell, dissenting below, characterized Darlington and the other mills as "largely paper corporations", and their relationships among themselves, as well as to Deering Milliken, as merely "paper arrangements" (R. 1905-06).

The latter phrase comes from Mr. Justice Douglas' opinion in *NLRB* v. *Deena Artware, Inc.*, 361 U. S. 398, 403 (1960). This is, so far as we are aware, the only case in which the Board's single employer doctrine has come before this Court for review. While it arose at the enforcement level (the Board had failed to collect back pay from the primary employer because it had transferred its assets to its parent after the Board's order), the case presented the same doctrine of entity liability that is subsumed by the Board's present question.

Deena Artware was one of four wholly-owned subsidiaries of Deena Products, in turn wholly-owned by Weiner. The directors and officers of all five corporations were Weiner, his wife, his son and his secretary. The Board alleged that Weiner had siphoned off all of Artware's assets to his other corporations in order to avoid the back pay order against Artware. It sought to demonstrate that Products and the surviving subsidiaries were alter egos, successors and assigns of Artware, and, hence, chargeable with the latter's back pay obligations. The Board described these companies as "a single integrated enterprise engaged in the same business, with each corporation performing a particular function as a department or division of the enterprise" (NLRB Sup. Ct. Br. 30). The case was presented, in short, as one involving the application of the Board's single employer doctrine.

But this Court did not decide the case on that basis. It held that the Board was entitled to the opportunity to

demonstrate that "the corporations under Weiner's ownership were only departments or divisions of a single enterprise" (361 U. S., at 402), but it carefully spelled out that the basis for such liability would be common law principles enabling a parent to be held liable for a subsidiary's tort or contract breach. Mr. Justice Douglas noted that "The insulation of a stockholder from the debts and obligations of his corporation is the norm, not the exception" (*id.*, at 402-03) and listed "some, though by no means all, of the relevant considerations" to be examined before the exception is applied: the corporate forms being "largely paper arrangements that do not reflect the business realities"; one company being operated as a division of another, or an inadequately financed shell; the several companies being represented as one; their affairs so intermingled that distinct corporate lines are blurred (*id.*, at 403). The only cases cited by this Court were traditional corporate-veil cases, none involving the Board.

The ownership pattern shows that Darlington, with nearly one-third of its shares in the hands of public holders, was not operated as a subsidiary, and certainly not as a division. Nor was Deering Milliken merely a holding company surrounded by a cluster of wholly owned subsidiaries in reality only divisions of the main enterprise. Though Deering Milliken was organized in 1865 and Darlington in 1883, it was not until Darlington's bankruptcy in 1937 that Deering Milliken, then Darlington's largest creditor, acquired any Darlington stock (R. 1896). The examiner expressly found that Darlington had not been organized, maintained or dissolved as part of a "scheme to evade" the obligations of the NLRA or any other statute (R. 92). The degree of single ownership of these respondents, in the hands of a diffuse group having varying interests in different parts of the whole, and with substantial blocs of outside

owners entitled to protection, is not sufficient to support the imposition of entity liability upon the whole for the violations of the Act by any part of the whole.

We have searched in vain for a decision by this or any other court sanctioning the disregard of corporate entities so as to allow the imposition of pecuniary liability upon a minority stockholder of the offending corporation in the absence of such direct participation in the violation by the stockholder as to make it jointly and severally liable. Nor have we found any statute where Congress has authorized collection from the stockholder on similar facts.[22] The Board's decision is unique in the field of corporate law.

POINT II

AN EMPLOYER OWNING SEVERAL PLANTS DOES NOT VIOLATE THE ACT BY PERMANENTLY CLOSING ONE AS LONG AS NO DISGUISED CONTINUANCE EXISTS

The Court of Appeals held that the owners of a business enterprise have the right to terminate that enterprise, and to go out of business completely and permanently, for any

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[22] On the instant facts, Deering Milliken would not be liable for social security payments for work done at Darlington [See Soc. Sec. Regs. §§ 31.3111-4 and 31.3121(d)-2] or any Darlington state or federal unemployment tax payments [See 1A CCH Unemployment Insurance Rep. 4280, ¶ 1311]. Also, even if Darlington were a wholly-owned subsidiary of Deering Milliken (definitely an *a fortiori* situation), Deering Milliken would not be liable for any Darlington income tax delinquencies [*National Carbide Corp.* v. *Commissioner*, 336 U. S. 422 (1949) and *Freedman* v. *United States*, 157 F. Supp. 613 (E. D. Ohio 1958), aff'd 266 F. 2d 291 (6th Cir. 1959)] or anti-trust or trade violations [*National Lead Co.* v. *FTC*, 227 F. 2d 825 (7th Cir. 1955), rev'd on other grds. 352 U. S. 419 (1957); *Charles Rubenstein, Inc.* v. *Columbia Pictures Corp.*, 176 F. Supp. 527 (D. Minn. 1959), aff'd 289 F. 2d 418 (8th Cir. 1961)], and service of process on Darlington would not be proper service on Deering Milliken. *Technograph Printed Circuits, Ltd.* v. *Epsco Inc.*, 224 F. Supp. 260 (E. D. Pa. 1963).

reason they see fit including unwillingness to deal with a labor union. On the basis of the language of the Act, its legislative history, the decided cases, and the congressional policy underlying both the Act and governmental regulation of business activity generally, this argument is correct and the holding of the Court of Appeals should be affirmed. We assume that Darlington will discuss this argument in its brief and shall not repeat that discussion here.

The principal ground of the Board's decision was that even if Darlington is considered by itself as a separate entity, it violated the Act by dissolving itself and completely liquidating its affairs. As an alternative ground for its decision, the Board held that Darlington and Deering Milliken and the other textile companies in which members of the Milliken family held stock interests should be regarded as a single employer and that for this reason the liquidation of Darlington was the closing by an employer of one of several plants and so an unfair labor practice. In this Court, the Board does not attempt to defend the first ground of its decision (see pp. 3 n. 2, 39-43). Instead, it seeks to justify its decision on the alternative ground and argues (pp. 2-3) that this case should be regarded as if the owner of several mills had permanently closed one of those mills for anti-union reasons.

Even if it is assumed that in this case there is a unitary owner of several mills and that the liquidation of Darlington represents the closing of only one of those mills, the Board's legal argument is unsound. The argument ignores the fact that the closing of Darlington was the liquidation of a separate, self-sustaining economic enterprise. Contrary to the Board's suggestion (pp. 33-34), no analogy can be drawn between this case and the situation that exists when an employer discharges employees for union activity but continues to have their work performed by other employees.

In this case there was a permanent closing and the work that was formerly done by the employees of Darlington was not thereafter performed by any other employees of the asserted single employer. We submit that when a single employer owning several plants liquidates one of those plants and there is no transfer of its operations to a new site or to one of the remaining plants, such a liquidation is entitled, without regard to whether other plants continue in operation, to that protection which derives from the right of an individual or a corporation to engage or to refrain from engaging in business for whatever reasons he or it sees fit.

We have demonstrated *supra* at pp. 8-11 that Darlington was not a runaway plant in any "sense" (AFL-CIO Br. 12-13) and no matter what "may well have been" conceivable (NLRB Br. 39-40). But this did not deter the Board. It proceeded to assess responsibility for Darlington's alleged unfair labor practices against Deering Milliken and "related" corporations because what it considered the employer entity "remained in business at other mills with other employees" (NLRB Br. 29).

Therefore, even though Darlington was, as the Board concedes (p. 48), "a more-or-less self-contained unit" and even though the business formerly done by Darlington was thrown upon the open market and could thereafter be obtained by other textile companies, whether affiliated with the Milliken family or not, only by competition in that market, the Act was allegedly violated because Deering Milliken and the related corporations "still exist" (R. 27). When Darlington went out of business its management was dispersed, its assets sold, and most of the proceeds thereof distributed as a liquidating dividend to the shareholders. To hold that the legal effect of Darlington's liquidation is transformed because some of the same share-

holders had other capital invested in other textile companies is to make this case turn on an irrelevancy. Capital investments in other companies can only be material because they enhance the possibility of a disguised continuance of the liquidated corporation. In this case, since the examiner, Board and Court of Appeals all held that no continuance of any type, disguised or not, did occur, these other investments became totally irrelevant.

We contend that it is not and should not be a statutory violation for a multi-plant employer to completely and permanently liquidate one plant unless there has been what this Court has called a "disguised continuance" of the old employer. *Southport Petroleum Co.* v. *NLRB*, 315 U. S. 100, 106 (1942). In the instant case, the examiner found (R. 99) that "the evidence submitted does not show that [Darlington] has been continued under a different name to permit violators to escape a remedial order while reaping the benefits of the business." In short, once it determined that the liquidation of Darlington was complete, involving the withdrawal of the capital invested therein and the total abandonment of the attempt to make a profit therefrom, the Board should have ceased its inquiry.

The permanent closing of a plant and the liquidation of the corporation owning it are intrinsically different from any situation that has been held an unfair labor practice. The Board relied on *NLRB* v. *Norma Mining Corp.*, 206 F. 2d 38 (4th Cir. 1953) as "a case very similar on its facts to the instant case" (R. 15-16). That case involved only the temporary cessation of mining operations, as the court which decided it subsequently made plain.[23]

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[23] In the present case, like *Norma* decided by the Fourth Circuit, both the majority (R. 1899) and the dissent (R. 1910) distinguished *Norma* as involving only a "temporary intermission". Even the AFL-CIO admits that the *Norma* shutdown was temporary (pp. 7, 9).

The permanence test has been applied on many occasions and is the factor that differentiates this case from those relied on by the Board and the union in their briefs. For example, in *NLRB* v. *Preston Feed Co.*, 309 F. 2d 347 (4th Cir. 1962), a case the dissenters in the court below considered "controlling on the legal issue here" (R. 1910), a corporation, hearing that a movement to organize the drivers at one of its plants had begun, "contracted out" those jobs to another corporation under the same management and control. In *NLRB* v. *Hugh Major*, 296 F. 2d 466 (7th Cir. 1961), an individual owner, shortly after a union election victory, discharged all his employees and transferred all his trucking equipment to a family corporation that he owned.

The Board (pp. 25, 38-39) places heavy reliance on *NLRB* v. *Missouri Transit Co.*, 250 F. 2d 261 (8th Cir. 1957) and *NLRB* v. *Savoy Laundry Inc.*, 327 F. 2d 370 (2d Cir. 1964). Actually, neither case involved a total and irrevocable discontinuance. In *Missouri Transit*, an employer operating several interstate lines and a twelve-mile intrastate shuttle bus service discontinued the latter. The interstate service that remained also operated over the route between Fort Leonard Wood and Waynesville. Therefore, the discontinuance of the shuttle division only resulted in a diminishing of the frequency of bus service between those two points. More significantly, there was nothing to prevent the company from increasing the number of buses on its interstate service thereby restoring the Leonard Wood-Waynesville service to approximately its pre-closing status.

The Board's reliance on *Savoy Laundry* is particularly misplaced. That company supplied laundry service to retail, wholesale and institutional customers. But, the record indicated that it did not discontinue its wholesale division

at all. It retained three of its wholesale customers (137 N. L. R. B. 306, 317) and there was nothing to prevent it from soliciting business from other wholesalers at any time.

The liquidation of a part of a business, involving the withdrawal of the capital investment in that part and the surrender of the employer's struggle for business and financial success, should be subject to the same standards as those applicable to the complete liquidation of a business. It is highly significant that no case involving a complete and permanent liquidation of *all* business operations has ever held that the closing violated the NLRA. See *NLRB* v. *New England Web, Inc.*, 309 F. 2d 696 (1st Cir. 1962); *NLRB* v. *Neiderman (Star Baby)*, 334 F. 2d 601 (2d Cir. 1964); *Mount Hope Finishing Co.* v. *NLRB*, 211 F. 2d 365 (4th Cir. 1954). The Board has acknowledged the validity of these cases by not seeking to defend before this Court its ruling (R. 16-18) that Darlington, considered by itself, violated the Act by closing and liquidating its only plant.

These courts, unlike the Board herein, have correctly perceived that a permanent closing is different from any temporary shutdown, or transfer of work or other devices such as appear in the cases relied upon by petitioners, by reason of permanence. As the Court of Appeals held here (R. 1901), a unique situation is presented by "the extinguishment altogether of [part of or all of] the business and the end of further participation by the employer in his former sphere. The predominant element of the principle we maintain is that the business is no longer extant and the owner has forfeited the penalty for withdrawing, that is, he has foregone the privilege of further pursuit of his business". The Board's statement of the issue as whether a "part" of a business may be discontinued with impunity represents a confusion between basically different things. One is a reshuffling, the other is a liquidation.

The identical considerations which should lead this Court to hold that an entire business may be liquidated, regardless of motive, require the same result when the closing of one of several plants is bona fide, complete and permanent, not involving any artifice to retain the benefit of the plant without the burden of unionization. The necessity of this result can be demonstrated by turning around an argument made by the Board in its decision (R. 17). By hypothesis all of the 28 "Deering Milliken" mills could be closed with impunity. If the shareholders chose to liquidate only 27 of them, keeping the small remainder of their investment in the textile industry, the Board would argue that only "part" of the business had been liquidated and the 27 closings were rendered illegal by the failure to effect a 28th —an absurd result.

In sum, where there has been a disguised continuance as in *Preston Feed*, or the continuation of the same activity, though on a lesser scale, with the power to resume the previous arrangement at any time, as in *Missouri Transit* and *Savoy Laundry*, there does exist a basis for assessing the employer entity with NLRA liability. He is trying to operate his business under another form. No employer should be allowed to escape a union in this fashion. The price of remaining in business and continuing to pursue profit through that business is the fulfillment of statutory obligations with respect to that business. An employer should not be penalized when it decides to accept what the examiner termed (R. 99) "the loss of profits and of that hope for future profits which motivated the enterprise." The Board has ignored the fundamental difference between the continuance of the effort to make a profit in a certain business pursuit and the complete and utter surrender of this effort. Economic suicide is necessarily different in kind and not merely in degree from a temporary closing or a plant or

product transfer. The Board's failure to recognize[24] this fundamental principle in this case should not be condoned by this Court.

POINT III

THE BOARD WAS CORRECT IN NOT ORDERING RESUMPTION OF THE DARLINGTON FACILITY AND IN AFFIRMING THE EXAMINER'S DISMISSAL OF THE COMPLAINT AGAINST ROGER MILLIKEN PERSONALLY

(A) Resumption of Operations

The union (pp. 3, 30-43) attacks the Board's order herein on the ground that it was error for the Board to refuse to order Darlington to resume operations. There is no merit in this contention.[25]

The Board has ruled that it will not order resumption if there has been a "total cessation of operations and the sale and disposition of . . . physical properties." *Royal Plating & Polishing Co.*, 148 N. L. R. B. No. 59, 57 L. R. R. M. 1006, 1008 (August 27, 1964). Therefore, in all five instances where the corporation totally and permanently retired from all business activity, it did not order the resumption of operations. *Royal Plating & Polishing Co., supra; Star Baby Co.*, 140 N. L. R. B. 678 (1963), enf'd as mod. sub nom. *NLRB* v. *Neiderman*, 334 F. 2d 601 (2d Cir. 1964); *New England Web, Inc.*, 135 N. L. R. B. 1019, enf. den. 309 F. 2d 696 (1st Cir. 1962); *Mount Hope Fin-*

[24]The Board reveals its one-sided viewpoint when it says (p. 34) that a total and permanent closing and an individual discharge "may differ slightly in [their] impact upon the employer."

[25]This contention was not passed on by the court below. If the judgment of the court below is affirmed, the contention is moot. If the judgment below is reversed, we submit that this contention of the union, together with any contentions made with respect to the propriety of the Board's order, should be initially considered on remand by the Court of Appeals.

ishing Co., 106 N. L. R. B. 480, enf. den. 211 F. 2d 365 (4th Cir. 1954) and the instant case. Furthermore, the courts that have considered the question have all agreed that re-opening cannot be ordered where there has been a complete bona fide discontinuance. *Southport Petroleum Co.* v. *NLRB*, 315 U. S. 100, 106 (1942); *NLRB* v. *New Madrid Mfg. Co.*, 215 F. 2d 908, 914 (8th Cir. 1954); *NLRB* v. *Caroline Mills*, 167 F. 2d 212, 214 (5th Cir. 1948).

Darlington did not merely make "administrative alterations in [its] organizational structure" *Bonnie Lass Knitting Mills*, 126 N. L. R. B. 1396, 1398. It committed economic suicide. In such situations the Board does not and cannot order resumption of operations.[26]

(B) Dismissing as to Roger Milliken Individually

The union's question 4 (p. 3) argues that the Board erred in not holding Roger Milliken individually liable for Darlington's alleged unfair labor practices. Its arguments have been made and rejected before. The trial examiner found no evidence that Roger Milliken had individually engaged in any unfair labor practices (R. 99) or had sought refuge from statutory responsibility behind any corporate entity (R. 92). The examiner also ruled (*ibid.*, see also R. 89) that both NLRA and corporate law principles required that "Roger Milliken, President" be construed as a reference to him in that capacity alone. Finally, the examiner emphasized (R. 90) that he had interpreted the charge in that fashion early in the proceedings and well within 10(b)'s six-month limitation, without evoking any protest from the union. Furthermore, all five Board members (R.

[26]Of course, as the court below recognized (R. 1899), a resumption order would raise serious constitutional problems. We understand these will be discussed by Darlington.

29-30) and all five circuit judges (R. 1902) agreed that the complaint against Roger Milliken personally was properly dismissed. We agree with the Board (p. 48 n. 44) that there is no merit to this contention.

CONCLUSION

For the foregoing reasons, the order of the Court below should be affirmed.

Respectfully submitted,

STUART N. UPDIKE
JOHN R. SCHOEMER, JR.
Attorneys for
Deering Milliken, Inc.

JOHN LORD O'BRIAN
HUGH B. COX
Of Counsel

INDEX

CITATIONS

Cases:

	Page
A. M. Andrews Company of Oregon v. *National Labor Relations Board*, 236 F. 2d 44	6
Associated Press v. *National Labor Relations Board* 301 U.S. 103	11
Brooks v. *National Labor Relations Board*, 348 U.S. 96	9
Franks Bros. v. *National Labor Relations Board*, 321 U.S. 702	9
J. G. Roy & Sons Co. v. *National Labor Relations Board*, 251 F. 2d 771	3
Johnston v. *Darlington Manufacturing Corp.*, Civil No. 126–258 (S.D. N.Y.)	14
Miami Newspaper Pressmen's Local No. 46 v. *National Labor Relations Board*, 332 F. 2d 405	3
Nathanson v. *National Labor Relations Board*, 344 U.S. 25	13
National Labor Relations Board v. *A. K. Allen Co.*, 252 F. 2d 37	2, 3
National Labor Relations Board v. *Arnolt Motor Co.*, 173 F. 2d 597, enforcing 68 NLRB 868	3
National Labor Relations Board v. *Calcasieu Paper Co.*, 203 F. 2d 12, enforcing 99 NLRB 794	3
National Labor Relations Board v. *Concrete Haulers, Inc.*, 212 F. 2d 477	5, 6
National Labor Relations Board v. *Deena Artware, Inc.*, 361 U.S. 398	2, 13
National Labor Relations Board v. *Gibraltar Industries, Inc.*, 307 F. 2d 428, certiorari denied, 372 U.S. 911	6
National Labor Relations Board v. *Jones Sausage Co.*, 257 F. 2d 878	5, 6
National Labor Relations Board v. *Killoren*, 122 F. 2d 609	13

757-037—64

Cases—continued

	Page
National Labor Relations Board v. *Lund*, 103 F. 2d 815	5, 6
National Labor Relations Board v. *McCatron*, 216 F. 2d 212, certiorari denied, 348 U.S. 943	3, 5
National Labor Relations Board v. *National Garment Co.*, 166 F. 2d 233, certiorari denied, 334 U.S. 845	6
National Labor Relations Board v. *National Shoes, Inc.*, 208 F. 2d 688	6
National Labor Relations Board v. *Reliance Fuel Oil Corp.*, 371 U.S. 224	13
National Labor Relations Board v. *Royal Oak Tool & Machine Co.*, 320 F. 2d 77	2
National Labor Relations Board v. *Somerset Classics, Inc.*, 193 F. 2d 613, certiorari denied *sub nom. Modern Manufacturing Co., Inc.* v. *National Labor Relations Board*, 344 U.S. 816	5, 6
National Labor Relations Board v. *Stowe Spinning Co.*, 336 U.S. 226	5
National Labor Relations Board v. *Williams*, 195 F. 2d 669, certiorari denied, 344 U.S. 834	6
Phelps Dodge Corp. v. *National Labor Relations Board*, 313 U.S. 177	11
Sakrete of Northern California v. *National Labor Relations Board*, 332 F. 2d 902, pending on petition for a writ of certiorari, No. 556, this Term	2, 6
Wiley v. *Livingston*, 376 U.S. 543	13

Statutes:

National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*:	
Sec. 2(2)	3
Sec. 10(j)	14
Code of Laws of South Carolina Sections 12-601, 12-644	13

Miscellaneous:

16A Fletcher, *Cyclopedia of Corporations* (1962 ed.)	13
Annotation—*Dissolution of Corporation*, 97 A.L.R. 477	13
Berle, *The Theory of Enterprise Entity*, 47 Col. L. Rev. 343	4

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 37

TEXTILE WORKERS UNION OF AMERICA, PETITIONER

v.

DARLINGTON MANUFACTURING COMPANY, ET AL.

No. 41

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DARLINGTON MANUFACTURING COMPANY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

I

In our opening brief, we pointed out that the court below had accepted *arguendo* the Board's findings that Darlington and Deering Milliken constituted a single employer for purposes of the Act, and that the Darlington plant had been shut down in order to

avoid collective bargaining at that plant and to retaliate against the employees for their selection of a union representative (NLRB Br. 26–29). In their briefs, Darlington and Deering Milliken have undertaken to challenge these findings, contending (1) that a single-employer relationship may not properly be sustained unless the ownership of the various companies sought to be combined is virtually identical; and (2) that Darlington went out of business for economic rather than discriminatory reasons (Darlington Br. 60–65, 43–51; Deering Milliken Br. 28–36). There is no merit to either of these contentions.

1. Although many of the cases where a single-employer relationship has been found involve situations where there was virtual identity of ownership among the various companies, the governing principle does not turn on that factor. The decisive inquiry is whether the relationship between the companies is such that they function, to a substantial degree, as a single enterprise. Such unity may be evidenced by a variety of factors, such as common ownership, common control over labor relations, integration of operations, or interchange of employees.[1] The question of what combination of these factors or others is sufficient to establish a single-employer relationship depends upon the circumstances of each case.

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[1] See *National Labor Relations Board* v. *Deena Artware, Inc.*, 361 U.S. 398, 402–404; *National Labor Relations Board* v. *Royal Oak Tool & Machine Co.*, 320 F. 2d 77, 80–81 (C.A. 6); *National Labor Relations Board* v. *A. K. Allen Co.*, 252 F. 2d 37, 38–40 (C.A. 2); *Sakrete of Northern California* v. *National Relations Board*, 332 F. 2d 902, 904–908 (C.A. 9), pending on petition for a writ of certiorari, No. 556, this Term.

Thus, while a single-employer finding is often justified where there is complete common ownership, this factor may be outweighed by other circumstances which evidence that the companies are in fact operated as separate entities.[2] Conversely, where these other circumstances show that the companies are operated as a single enterprise, a single-employer finding may be warranted notwithstanding the lack of a virtual identity in ownership interest.[3] Nor is a different conclusion required by the consideration that, if a single-employer relation is found where the ownership of the two companies is not identical, this "would work a grave injustice on the minority owners of the corporation held secondarily responsible, who are thus penalized for the acts of others over

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[2] See *Miami Newspaper Pressmen's Local No. 46* v. *National Labor Relations Board*, 322 F. 2d 405, 409 (C.A.D.C.) (independent determination of labor policies and substantial geographic separation); *J. G. Roy & Sons Co.* v. *National Labor Relations Board*, 251 F. 2d 771 (C.A. 1) (separate formulation of labor policies and no employee interchange).

[3] See, *e.g.*, *National Labor Relations Board* v. *Calcasieu Paper Co.*, 203 F. 2d 12, 13 (C.A. 5), enforcing 99 NLRB 794, 795–797, 801–802; *National Labor Relations Board* v. *Arnolt Motor Co.*, 173 F. 2d 597 (C.A. 7), enforcing 68 NLRB 868, 872–873; *National Labor Relations Board* v. *McCatron*, 216 F. 2d 212, 213–214 (C.A. 9), certiorari denied, 348 U.S. 943; *National Labor Relations Board* v. *A. K. Allen Co.*, 252 F. 2d 37 (C.A. 2).

Darlington's attempt to distinguish these cases (Br. 63) is unavailing. Since the same statutory definition is involved—*i.e.*, the definition of "employer" in Section 2(2)—the test of employer status is the same whether the issue arises in connection with a representation proceeding, the determination of the Board's statutory jurisdiction, or, as here, the determination of responsibility for unfair labor practices.

which they had no control and which they were powerless to prevent" (Darlington Br. 64). The minority stockholders, by electing to participate in a company which has so entwined itself with the affairs of another as to make the two companies in reality one economic enterprise, are no longer entitled to hide behind the corporate veil and are properly chargeable for the acts of the combined enterprise.[4] See Berle, *The Theory of Enterprise Entity*, 47 Col. L. Rev. 343.

The Board was fully warranted in concluding that there were ample ties among Deering Milliken, Darlington, and the other corporations in the Milliken complex to make them a single employer for purposes of the Act. As shown in our opening brief (pp. 13–21), Darlington was one of 17 corporations, operating 27 textile mills, all commonly controlled by the Milliken family. The Milliken family owned a majority of the stock in Deering Milliken and Company and in Cotwool Manufacturing Company (one of the 17 corporations), and, through direct stock ownership and the stock held by these two companies, the family owned more than 66 percent of Darlington's stock. Deering Milliken and Company acted as exclusive sales agent and factor for all 27 textile mills.

Roger Milliken was president of Deering Milliken and Company, and of most of the mill corporations, including Darlington. A majority of the directors of all but one of these corporations were members of the Milliken family. Such pervasive interlocking of

[4] Ordinarily, of course, the stockholders are not individually liable.

stock ownership, officers and directors is cogent evidence of a single-employer relation.[5]

Moreover, as the dissenting judges below pointed out (VI R. 1905):

> The record * * * reveals that the Deering Milliken complex was a thoroughly integrated, monolithic enterprise. The participating mills were able to call upon various service areas of the enterprise to effect optimum employment of men, material, and machinery. Sales were made and factored through a common agency. Management personnel was jointly recruited and transfers freely made from one corporation to another. Moreover, descriptive literature and advertising published by Deering Milliken on behalf of the manufacturing corporations repeatedly emphasized the generic brand name of Milliken rather than individual corporate brand names.

This high degree of integration of operations, which resulted in the various corporations not only functioning as a single economic enterprise but in holding themselves out to the public as one entity, "Milliken,"

[5] "Interlocking directorates and family ties make the four [mills] equal one for our purposes." *National Labor Relations Board* v. *Stowe Spinning Co.*, 336 U.S. 226, 227, n. 2. See also, *National Labor Relations Board* v. *Somerset Classics, Inc.*, 193 F. 2d 613, 615 (C.A. 2), certiorari denied, *sub nom. Modern Manufacturing Co., Inc.* v. *National Labor Relations Board*, 344 U.S. 816; *National Labor Relations Board* v. *Lund*, 103 F. 2d 815, 818–819 (C.A. 8); *National Labor Relations Board* v. *Jones Sausage Co.*, 257 F. 2d 878, 879–880 (C.A. 4); *National Labor Relations Board* v. *Concrete Haulers, Inc.*, 212 F. 2d 477, 478–479 (C.A. 5); *National Labor Relations Board* v. *McCatron*, 216 F. 2d 212, 213–214 (C.A. 9), certiorari denied, 348 U.S. 943.

also furnishes substantial support for a single-employer finding.[6]

Finally, the record shows that one person, Roger Milliken, did in fact exercise dominion and control over all phases of the business and labor relations at each mill and over each corporate entity in the entire complex.[7] In addition to approving capital expenditures and passing on other financial matters, he received reports from each of the mills as to progress in reducing the number of jobs, the pay raises given, hours worked and job assignments, and employee productivity. His approval was sought before vari-

[6] See *National Labor Relations Board* v. *Gibraltar Industries, Inc.*, 307 F. 2d 428, 431 (C.A. 4), certiorari denied, 372 U.S. 911; *National Labor Relations Board* v. *Jones Sausage Co.*, 257 F. 2d 878, 879–880 (C.A. 4); *National Labor Relations Board* v. *National Garment Co.*, 166 F. 2d 233, 238 (C.A. 8), certiorari denied, 334 U.S. 845; *National Labor Relations Board* v. *Somerset Classics, Inc.*, 193 F. 2d 613, 615 (C.A. 2), certiorari denied, *sub nom. Modern Manufacturing Co., Inc.* v. *National Labor Relations Board*, 344 U.S. 816; *National Labor Relations Board* v. *Concrete Haulers, Inc.*, 212 F. 2d 477, 478–479 (C.A. 5).

[7] The vesting of ultimate power over labor relations and other operations in a single individual is likewise persuasive evidence of a single-employer relation. See *National Labor Relations Board* v. *Gibraltar Industries, Inc.*, 307 F. 2d 428, 431 (C.A. 4), certiorari denied, 372 U.S. 911; *National Labor Relations Board* v. *Williams*, 195 F. 2d 669, 671 (C.A. 4), certiorari denied, 344 U.S. 834; *A. M. Andrews Company of Oregon* v. *National Labor Relations Board*, 236 F. 2d 44, 45 (C.A. 9); *National Labor Relations Board* v. *Lund*, 103 F. 2d 815, 818–819 (C.A. 8); *National Labor Relations Board v. National Shoes, Inc.*, 208 F. 2d 688, 691 (C.A. 2); *National Labor Relations Board* v. *Somerset Classics, Inc.*, 193 F. 2d 613, 615 (C.A. 2), certiorari denied, *sub nom. Modern Manufacturing Co., Inc.* v. *National Labor Relations Board*, 344 U.S. 816; *Sakrete of Northern California* v. *National Labor Relations Board*, 332 F. 2d 902, 906–907 (C.A. 9), pending on petition for a writ of certiorari, No. 556, this Term.

ous personnel actions were taken, before vacation plans were announced, and before changes in the employees' group insurance plan were made. He sent numerous memoranda to the mills—addressed to all of them and replete with references to "our" mills—containing suggestions with respect to the hiring of personnel, improving production, reducing jobs, and many other matters. And, as shown (NLRB Br. 3–13), Roger Milliken initiated and executed the decision to close the Darlington plant because of the employees' organizational activities, and he thereafter distributed to management personnel in several mills of the family complex a magazine article emphasizing that the closing of the Darlington plant was consistent with the Milliken family's practice of closing plants that had become unionized.

2. The second contention—that the Darlington plant was shut down for economic reasons and not as an act of reprisal for the employees' having selected the Union—stands on no better footing. The Trial Examiner, whose finding was adopted by the Board (R. 7–9, 65–66), found to the contrary. The dissenting judges below observed that the fact that "the plant closure was the direct result of the organizational activities of the employees is too well documented by the record to require extended discussion" (VI R. 1909); the judges comprising the majority of the court below accepted this finding *arguendo* (VI R. 1898–1899).

The evidence fully supports the finding of the Board and the Trial Examiner that it was not the

economic situation of the plant or the anticipated costs of an organized plant, but Roger Milliken's general hostility to unions and his desire to punish the employees for having selected a representative which prompted the shutdown of the Darlington plant. This evidence was summarized in the dissenting opining below (VI R. 1909):

> Roger Milliken himself gave that reason to his stockholders for his decision to close the mill. On approximately thirty separate occasions, supervisory personnel threatened the employees with closure in case the union won, and attributed their prophesies to Roger Milliken's well publicized hostility to unions. Milliken himself circulated to all of his mills a trade magazine article pointing out that his attitude was so well known that liquidation was inevitable from the minute the election result was announced. Darlington's belated efforts to stress the economic factors are belied by the prior history of the mill. In the nine months prior to the election, management had spent $400,000.00 in a modernization program which included not only new machinery but additions to plant structure * * *.

Moreover, Roger Milliken decided to shut down the day after the Union's election victory, and well before it had made any bargaining demands. And even when he was informed that 83 percent of the employees had subsequently repudiated the Union, he refused to reconsider his decision, replying that he would not operate so long as the work force included

"17 percent of hard core labor people" (R. 5; 268).[8]

Nor is there any basis in the record for assuming, as Darlington does (Br. 46–51), that Milliken's decision was based upon a particularized evaluation of the impact which unionization would have on the plant's financial condition. The record shows that his primary motive was simply to defeat employee organization and that any economic judgment rested on a bare generalized impression that the Union would make continued operations less profitable.[9] If the purposes of the Act are to be carried out, such an imprecise judgment cannot be regarded as sufficient to constitute an economic justification for the sort of action taken here. For if this general notion is sufficient, all prohibited anti-union conduct could be justified on the same "economic" ground.

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[8] Darlington suggests (Br. 45, n. 23) that this statement shows that Roger Milliken was unwilling to keep the plant open even in the absence of any Union. It argues that, if "only 17% of the workers adhered to the Union, the Union stood ultimately to lose its certification and the company would be under no obligation to deal with it." The fallacy in this argument is that a certification is presumptively valid for at least one year even though the union loses its majority. Furthermore, a loss of majority status caused by unfair labor practices does not relieve an employer of his bargaining obligation. See *Brooks* v. *National Labor Relations Board*, 348 U.S. 96; *Franks Bros.* v. *National Labor Relations Board*, 321 U.S. 702.

[9] The cases relied on by Darlington (Br. 46–47) do not advance its position. Most of the cases did not, as here, contain any independent evidence of anti-union motivation. Moreover,

II

1. Darlington and Deering Milliken contend that, even if the Board's single-employer finding be accepted, it is still necessary to determine whether the Act permits an employer to go completely out of business even though his motive is to avoid collective bargaining and to penalize his employees for selecting a union representative. This argument rests on the assumption that there is no meaningful distinction between permanently closing down part and shutting down all of an operation. For, the argument runs, just as the employer pays the price of foregoing profits from an enterprise if he goes completely out of business, so does he lose profits from a single operation if he permanently closes one of his plants and does not transfer its work elsewhere (Darlington Br. 22–24, 52–59; Deering Milliken Br. 36–43).

In our opening brief (pp. 39–42), we have shown that this argument is unsound for two reasons. First, nothing in the Act or its administration suggests that an employer may engage in anti-union discrimination, coercion, and restraint if he is willing to pay a price for it. Second, even if such conduct were permitted whenever a *quid pro quo* could be found, it would not be permissible here. For Deering Milliken "paid no price," but used the closing of the Darlington plant to ward off unionization by the employees in

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none of the cases involves a situation where the employer terminated operations on a naked assumption (cf. Darlington Br. 49–50) that the advent of the union made continued operations uneconomical. Cf. the cases cited in n. 30, p. 34 of the Board's Main Brief.

its other plants. Hence, whatever may be the result in other situations, this case may properly be viewed as legally indistinguishable from cases in which an employer contracts out or discontinues part of an operation for anti-union reasons (NLRB Br. 33–34).

2. The legislative history cited by Darlington (Br. 30–32) does not require a contrary conclusion. There is no indication that the statements that nothing in the Act prevent an employer from closing down his factory were intended to apply to a situation where, as here, the shutdown was discriminatorily motivated. On the contrary, the context in which the statements were made reveal that they have reference only to situations in which the shutdown is motivated by economic or other reasons not proscribed by the Act. Thus, while Senator Walsh stated, "No one can compel an employer to hire others in addition to those he sees fit to hire," it is clear that this only has reference to a refusal to hire based on non-discriminatory grounds. *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U.S. 177, held that a refusal to hire because of anti-union considerations is an unfair labor practice.[10]

[10] It is also clear that a temporary shutdown is illegal if motivated by anti-union considerations (NLRB Br. 38, n. 35, 36). In quoting from *Associated Press v. National Labor Relations Board*, 301 U.S. 103, 132, Darlington (Br. 26, n. 10) omits one important qualification. The entire passage reads: "The act does not compel petitioner to employ anyone; * * * The act permits a discharge for any reason *other than union activity or agitation for collective bargaining.* * * * The petitioner is at liberty * * * to exercise its undoubted right to sever his relationship for any cause that seems to it proper *save only as a punishment for, or discouragement of, such activities as the act declares permissible.*" [Emphasis added.]

3. Contrary to Darlington's assertion (Br. 67–69), the fastening of back-pay liability upon it for the period after it ceased operations [11] does not exceed the power of Congress to regulate commerce. If Darlington and Deering Milliken are viewed as one employer, a view which we have shown is amply warranted on this record, it is clear that the employing enterprise still continues in commerce notwithstanding the closing of the Darlington plant. And since the failure to remedy the unfair labor practices involved in that closing would have a substantial impact on the remainder of the enterprise, this is a sufficient effect on commerce to justify the continued application of Congress' regulatory power. Moreover, even if Darlington alone were viewed as the employer, it does not follow that it would remove itself from the reach of the commerce power simply by going out of business. "The mere fact that an employer may cease to do business certainly does not end the public interest involved in seeing that a back-pay award under the Act

[11] The Board's order requires Darlington, together with Deering Milliken, to reimburse the wrongfully discharged Darlington employees for wages lost as a result of the discrimination from the time the decision to liquidate the plant was made until the employees are able to obtain substantially equivalent employment, or are placed on a preferential hiring list at other Deering Milliken plants (R. 21–23, 27–28).

is satisfied:" *National Labor Relations Board* v. *Killoren*, 122 F. 2d 609, 612 (C.A. 8). See also *Nathanson* v. *National Labor Relations Board*, 344 U.S. 25. Cf. *National Labor Relations Board* v. *Reliance Fuel Oil Corp.*, 371 U.S. 224, 226; *Wiley* v. *Livingston*, 376 U.S. 543, 549.

Nor is there merit to the contention that to subject the Darlington plant's assets to back-pay liability deprives the stockholders of that plant of property without due process of law (Darlington Br. 69–73). As the Board pointed out (R. 11):

> The South Carolina Code [Sec. 12–601, 12–644] considered in its entirety, provides, * * * that, in the event of a corporate dissolution, the corporate entity survives for the very purpose of continuing the legal obligations that the corporation incurred before the dissolution or in the course of dissolution.

Thus, under a State law whose validity it does not challenge, Darlington's assets remain subject to claims by an unsecured creditor such as the Board. *National Labor Relations Board* v. *Deena Artware Inc.*, 361 U.S. 398. Only after such creditors are satisfied do the stockholders have a right to receive the assets which remain. See 16A Fletcher, *Cyclopedia of Corporations* (1962 ed.) Secs. 8148, 8161, 8174, 8186, 8217–8220; Annotation—*Dissolution of Corporation*, 97 A.L.R. 477. Any delay in settling the Board's status as a creditor is the consequence of the complexity of the underlying issues, which have occasioned review by this

Court. Such an opportunity for judicial review before liability finally attaches is the very antithesis of a deprivation of property without due process. Moreover, Darlington can hardly complain of the delay in distributing the remaining assets to the shareholders, since it agreed to discontinue further distributions until this case was finally resolved.[12] Finally, it should be noted that Darlington has never been powerless to prevent its back-pay liability from mounting. Under the terms of the Board's order, Deering Milliken, the controlling owner of Darlington, could limit this liability at any time by placing the employees on a preferential hiring list.

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[12] A stipulation to this effect was entered in a proceeding for interim injunctive relief brought under Section 10(j) of the Act (29 U.S.C. 160(j)) by the Board's Regional Director. *Johnston* v. *Darlington Manufacturing Corp.*, Civil No. 126–258 (S.D. N.Y.), November 27, 1957. The Regional Director's petition asserted, on information and belief, that, before the proceeding was instituted, Darlington had distributed $3,480,000, leaving $776,000 to cover taxes, expenses of liquidation, and back pay.

For the reasons stated here and in our main brief, the judgments denying enforcement of the Board's order should be reversed, and the case remanded to the court of appeals for further proceedings.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

LAURENCE S. GOLD,
Attorney,
National Labor Relations Board.

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